

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON  
 3 AT TACOMA

4 UNITED STATES OF AMERICA,	)	Docket No. CR05-5828FDB
5 Plaintiff,	)	Tacoma, Washington
6 vs.	)	February 14, 2008
7 BRIANA WATERS,	)	VOLUME 4
8 Defendant.	)	

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 11 TRANSCRIPT OF PROCEEDINGS  
 12 BEFORE THE HONORABLE FRANKLIN D. BURGESS  
 SENIOR UNITED STATES DISTRICT COURT JUDGE, and a jury.

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1 THURSDAY, FEBRUARY 14, 2008 - 9:00 A.M.

2 \* \* \*

3 (Jury not present.)

4 THE COURT: You may be seated. Good morning.

5 THE CLERK: This is in the matter of United States  
6 versus Briana Waters, Cause No. CR05-5828FDB.

7 Counsel, please make an appearance for the record.

8 MR. BARTLETT: Mark Bartlett and Andrew Friedman and  
9 Special Agent Halla for the United States.

10 MR. FOX: Neil Fox and Robert Bloom for Ms. Waters,  
11 who's present.

12 THE COURT: All right. Are we ready for the jury and  
13 the next witness?

14 Bring them in.

15 (Jury present.)

16 THE COURT: All right. You may be seated.  
17 Good morning. Happy Valentine's Day and all of that.  
18 You look like you are rested and ready to go.

19 All right. Next witness.

20 MR. BARTLETT: Your Honor, at this time, the United  
21 States calls Eric Lindahl to the stand.

22 THE COURT: All right. Come forward, Sir.

23 I will have you step up and raise your right hand and be  
24 sworn.

25 ERIC LINDAHL, called as a witness, duly sworn.

1 THE COURT: Take the witness chair, please.

2 DIRECT EXAMINATION

3 BY MR. BARTLETT:

4 Q. Would you tell the members of the jury your first and last  
5 name and spell your last name for the Court Reporter?

6 A. Eric, E-R-I-C, Lindahl, L-I-N-D-A-H-L.

7 Q. Where do you work?

8 A. Seattle Fire Department.

9 Q. Can you kind of walk us through your history with the  
10 Seattle Fire Department, bringing us up to what your current  
11 position is?

12 A. Sure. I was hired in 1987 as a firefighter for the  
13 Seattle Fire Department. In 1992, I was promoted to  
14 Lieutenant. In 1996, I was promoted to Captain. Currently, I  
15 hold the rank of Battalion Chief, and I was promoted to that  
16 rank in 2001.

17 Q. Can you explain, kind of walking us through as you went  
18 through the Seattle Fire Department, what the different  
19 responsibilities you had as you reached each stage of your  
20 career?

21 A. Well, as a firefighter, of course, I would ride on the  
22 back end of a fire engine, and I would respond to fire  
23 emergencies, medical emergencies, rescues such as car  
24 accidents where people are trapped, industrial accidents.

25 As a Lieutenant, I became a supervisor of a fire engine.

1 Typically, the crew was two or three firefighters on the fire  
2 engine, plus a Lieutenant.

3 As a Captain, pretty much the same role. You are the  
4 supervisor of a crew on a fire engine and that's, again, two  
5 or three firefighters, plus yourself. In addition as a  
6 Captain, you are responsible for all operations of a fire  
7 station.

8 So, because we provide 24-7 service, you have to have more  
9 than one shift operating out of a fire station so that we can  
10 relieve each other as the shift's terminated at the end of the  
11 day or, in our case, in the morning.

12 So, a fire station will actually have four different sets  
13 of crews working to provide that 24-7 service. The Captain  
14 makes sure that everything is coordinated within those four  
15 sets of people working in that fire station.

16 As a Battalion Chief, I currently am now in charge of  
17 eight fire stations, and in that position, as well as  
18 responding to emergency scenes as a senior supervisor, I  
19 coordinate staffing at the fire station, make sure that  
20 there's enough people on duty that day when I come to work,  
21 and as people take time off, get sick, provide for placement  
22 there. I also provide for training.

23 So, just a general supervisory role in one region of the  
24 city and, in my case, that's seven fire stations.

25 Q. With regard to the seven fire stations, are they

1 geographically kind of grooved together?

2 **A.** Yes. In my case, it's northeast Seattle. That's my area.  
3 They are called battalions. So I am in Battalion 6, and that  
4 is all the fire stations in northeast Seattle.

5 **Q.** Can I direct your attention to May 21, 2001? What was  
6 your position at that point in time with the Seattle Fire  
7 Department?

8 **A.** My rank was Captain. I had not been promoted yet. I was  
9 acting in one position up as a Battalion Chief.

10 **Q.** You hadn't gotten the promotion, but you were doing the  
11 work?

12 **A.** Yes, I was, and that's common.

13 MR. BARTLETT: If the witness could be handed what's  
14 been previously marked as Government's Exhibit 310-A, which I  
15 think is right in front of you.

16 THE WITNESS: I am seeing 311-A.

17 MR. BARTLETT: It's a new document that we just  
18 handed up this morning.

19 THE WITNESS: I don't see a folder labeled 310-A.

20 MR. BARTLETT: I am not offering this into evidence,  
21 Your Honor.

22 BY MR. BARTLETT:

23 **Q.** Is that a document you prepared?

24 **A.** Yes, it is.

25 **Q.** Can you explain to the members of the jury what it is you



1 did and how you prepared it?

2 **A.** This is a personal overview written a day or so, at least,  
3 after the fire, of kind of what I did. Part of it was  
4 generated from our dispatch log, which is a record of what our  
5 dispatch says over the radio and the actions that they do.

6 **Q.** Taking it one step at a time, when you are checking a  
7 dispatch log, does that provide you fairly specific times?

8 **A.** Yes, it does.

9 **Q.** So you are looking at the dispatch log as you are trying  
10 to recreate for yourself what happened on May 21st?

11 **A.** Correct.

12 **Q.** Go ahead.

13 **A.** So these times are fairly accurate, and in some cases  
14 extremely accurate because they are taken off of radio  
15 transmissions which can be coupled to time of day.

16 So, this is just kind of a general overview of how I saw  
17 the incident, some of the highlights that I wanted to recall  
18 and record.

19 **MR. BARTLETT:** With the Court's permission, I would  
20 like to ask that he be allowed to keep that there. If you  
21 need to, you can refresh your memory as to specific times by  
22 looking at that.

23 **THE WITNESS:** Sure.

24 **MR. BLOOM:** We have no objection to that.

25 **THE COURT:** All right.

1 BY MR. BARTLETT:

2 Q. Did there come a time in the early morning hours of May  
3 21st that you received notification of a possible fire at the  
4 Center for Urban Horticulture?

5 A. That is true.

6 Q. How did that happen? You are acting Battalion Chief.  
7 Where are you physically, and how did you get that  
8 notification?

9 A. I am in a fire station with a fire crew that has a fire  
10 engine and a ladder truck as well. As a supervisor, as a  
11 Battalion Chief or acting Battalion Chief in that case, I  
12 drive a Suburban and respond with the fire crews that are  
13 dispatched.

14 So the bell hits just like you see in the movies. We get  
15 up, race to the vehicles that we are assigned to and respond  
16 with lights and sirens to the incident that we are directed  
17 to.

18 Q. Specifically with regard to May 21st, Dan Priest testified  
19 yesterday about what his crew did. Were you notified at the  
20 same time that Dan Priest was?

21 A. No. This alarm came in as what we call a 1 and 1, an  
22 automatic fire alarm. In other words, some device in the  
23 building went off, it went to a central dispatcher contracted  
24 by the UW, and then that dispatcher contacts the 911 system in  
25 Seattle.

1       At that point in time, because of the type of alarm,  
2 there's no other calls indicating there's a fire, just an  
3 alarm device going off in a building, our protocol is to send  
4 one fire engine and one ladder truck to go check it out.  
5 That's what Dan Priest responded on, that smaller response  
6 size.

7 **Q.** With regard to the smaller response, did you eventually  
8 have a second notification with regard to the fire?

9 **A.** Yes. On arrival -- actually, before arrival, they saw a  
10 glow in the sky, and I believe that is the time that  
11 Lieutenant Priest noted that and asked for a full response  
12 knowing that there was a significant fire involved in that  
13 area.

14 **Q.** When you say he asked for a response, physically what  
15 would he have done and how would you have been notified about  
16 this?

17 **A.** We have a radio system that is always monitored by the  
18 dispatcher of Seattle Fire Department. He would get on the  
19 radio and say: "This is Engine 38," which is his fire engine;  
20 "we have a large amount of fire visible as we're responding, I  
21 am requesting a full response," which gives more fire  
22 apparatus, more manpower.

23 **Q.** When he asked for a full response, does that impact you?

24 **A.** Yes. A full response involves usually four fire engines,  
25 two ladder trucks, two Battalion Chiefs, an aid unit, an aid

1 car, an ambulance and a medic unit and a few other  
2 ancillary -- safety chief. I think that's about it.

3 Q. Is that what happened on May 21st?

4 A. That is what happened.

5 Q. When did you actually start to respond yourself?

6 A. It looks like I probably began to respond about 3:27,  
7 3:30. I don't have that specific time. It was not important  
8 to me when I wrote up this log.

9 Q. Does it indicate when the first call came in with regard  
10 to this fire?

11 A. This log indicates that the first call came in at 3:22.  
12 That's when Lieutenant Priest's fire engine and ladder 9 were  
13 dispatched, the initial 1 and 1. So the call may have come in  
14 a minute or two earlier than that.

15 Q. How long does it take -- where are you physically? Mr.  
16 Priest explained where his fire station was. Where are you?

17 A. I am in the University District Fire Station, which is, I  
18 am guessing, a mile-and-a-half away, and I am in the fire  
19 station with the crews that are assigned there. Like I say,  
20 there was fire engine 17, ladder 9 and myself.

21 Q. Can you describe what you see when you get to the scene?

22 A. I see a glow in the sky as I am coming down the Viaduct --  
23 it's quite a view from the Viaduct; it's a typical response  
24 route that we would take to that location -- and knew that I  
25 had some work to do.

1       As I approached the building, several hundred yards out, I  
2 note that there's no fire on the particular side of the  
3 building that I can see, but there's a glow from the back  
4 side, which would be the south side.

5 **Q.** Where do you go?

6 **A.** Where do I go?

7 **Q.** Yes.

8 **A.** Ideally, I like to do a 360, drive around the building  
9 because as -- I end up -- in my position, I am the commander  
10 of the scene, so I like to kind of get a size-up to see what's  
11 going on.

12       That building, I knew I couldn't drive around so I drove  
13 up and approached such that I could see three sides of the  
14 building. I ended up stopping, I guess it would be the  
15 southeast corner where I could see some flame from the  
16 building, in the parking lot of the southeast corner.

17 **Q.** As you are at the scene, you are kind of running it, I  
18 assume?

19 **A.** Yes.

20 **Q.** Did there come points in time where you determined, based  
21 on your training and experience, that you need more  
22 assistance?

23 **A.** Oh, yeah. Uh-huh.

24 **Q.** Can you explain how that comes about and when it occurs  
25 and what you actually do?

1 **A.** Well, you know, on that full alarm assignment, which was  
2 the secondary request from Lieutenant Priest, I know I have a  
3 certain number of resources. If the fire is not terribly  
4 large, I can generally suppress the fire with those resources.  
5 As the intensity of this fire grew, I knew -- I could project  
6 that I would need more, and then I asked for further  
7 resources.

8 Typically, in our fire department, we ask for a second  
9 alarm. We call it a 211, 2-1-1. A 211 means basically you  
10 are getting nearly twice the amount of resources as the first  
11 alarm assignment.

12 **Q.** Did there come a point in time when you indicated to  
13 dispatch that you wanted a 211, you wanted further resources?

14 **A.** Yes, I did.

15 **Q.** When did that happen?

16 **A.** Just after the 4:00 hour. I believe it's written here.  
17 Yeah, it's 4:01:00 in the morning.

18 **Q.** Did there come a point in time when you actually increased  
19 that request?

20 **A.** Yes, I did. At 4:14, I requested a three-alarm  
21 assignment, and that again adds about the same number of  
22 people. It doesn't double the 211, but it adds another  
23 basically one chief, three or four fire engines. It really  
24 depends on the type of building and another two ladder trucks  
25 and another chief officer.

1 Q. Did, in fact, those engines respond?

2 A. Yes.

3 Q. How long did it take you to suppress the fire?

4 A. We have a term called a "tapped fire" and that occurred  
5 and was announced over the radio at 5:58 in the morning.  
6 However, at 5:20 in the morning, we said "fire under control."  
7 "Fire under control" means that we've got a good handle on the  
8 fire, no further damage is going to be caused by the fire  
9 itself, and we will shortly be able to say that we have this  
10 completely extinguished, and then "tapped fire" means it's  
11 essentially completely extinguished. There's always going to  
12 be hot spots, little flare-ups, but we have got it  
13 extinguished.

14 Q. Prior to testifying today, did I ask you to take a look at  
15 a short video that one of the local news stations made of the  
16 fire that night?

17 A. Yes, you did.

18 Q. Did that video that you looked at fairly and accurately  
19 depict at least a short scene, short pictures from that fire?

20 A. Yes, it did.

21 Q. Take a look at Government's Exhibit 311-A and tell me if  
22 you recognize that video.

23 A. I recognize the disc.

24 Q. You have your initials on it?

25 A. Yes. It has my initials on it.

1 MR. BARTLETT: Offer 311-A.

2 MR. BLOOM: We have no objection.

3 THE COURT: Admitted.

4 (Exhibit No. 311-A admitted.)

5 MR. BARTLETT: If I could play that for the jury,

6 Your Honor.

7 (Video 311-A played in open court.)

8 BY MR. BARTLETT:

9 Q. You can take a look at the photos marked as 312-A, B and  
10 C, and tell me if those photographs also fairly and accurately  
11 depict scenes from the fire that you were fighting that night  
12 on May 21, 2001.

13 A. 312-A does. 312-B does. 312-C, I can't identify the  
14 building, but the intensity is accurate as to the type of fire  
15 that was there.

16 Q. We will just go with A and B then.

17 A. Okay.

18 MR. BARTLETT: If I could offer those, Your Honor.

19 MR. BLOOM: No objection.

20 THE COURT: Admitted.

21 (Exhibit Nos. 312-A and 312-B admitted.)

22 MR. BARTLETT: Publish them to the jury.

23 BY MR. BARTLETT:

24 Q. Were there any circumstances relating to this fire in this  
25 building that presented difficulties for your job as the



1 Battalion Chief in fighting the fire?

2 **A.** Well, yes. One of them was that there were reported  
3 hazardous materials involved or processes in laboratories in  
4 the building, and I received this from a reliable source, and  
5 I gave great credence to it.

6 Because of this, I initiated a defensive operation, which  
7 means that we don't take hose lines into the building. My  
8 concern was exposing my fire crews to hazardous materials.  
9 Because of that, it's difficult to extinguish all areas of the  
10 fire when you are not going into the building. You stand  
11 outside and put water on the fire from outside.

12 **Q.** Anything else about the structure that presented  
13 difficulties for you?

14 **A.** The structure was -- there were several features of the  
15 structure. One of them was there was lattice work along the  
16 outside of most of the building. The lattice work was 2-by-2  
17 cedar strips, two inches by two inches. I think they were  
18 about two inches square all around the building. This acted  
19 as if it were kindling.

20 The fire that I saw was on the south side of the building.  
21 I believe that was a stretch of warm weather. It was cedar  
22 siding, which burns very quickly, the actual sheeting of the  
23 building. The soffits of the building which are underneath  
24 the eaves were open to provide ventilation to remove moisture  
25 from the attic space.

1        However, they were so open that it allowed fire to go up  
2 this lattice work on the outside of the building and the cedar  
3 siding on the outside of the building up into the soffits and  
4 travel into the attic area, which was wood construction  
5 without sprinklers, and the fire would travel unimpeded  
6 throughout the entire attic area.

7        So that aided in the spread of the fire immensely, the  
8 open soffits and the cedar construction details outside. Very  
9 unique.

10 **Q.** At some point, did individuals associated with the  
11 building from the University of Washington arrive at the  
12 scene?

13 **A.** Yes, they did.

14 **Q.** Were you able to talk with them?

15 **A.** Yes, I was.

16 **Q.** After speaking with them, were you able to make a more  
17 accurate determination about the degree of risk of the  
18 hazardous material inside?

19 **A.** When you first mentioned that -- the personnel that first  
20 showed up were the building engineers, which they typically --  
21 sometimes they even beat us to the location. I wouldn't be  
22 surprised if they had because they had received the alarm  
23 actually earlier than us because they are monitoring their own  
24 alarm system.

25        Those building engineers, they are the people that are

1 familiar with the physical plan, the heating systems, the  
2 alarm systems; they have keys to all the areas of the  
3 building, more or less, and provide us access.

4 Those people wouldn't have information regarding the  
5 specific contents of all of the labs, all of the buildings at  
6 the University. They may have knowledge just from general  
7 experience of being around all the time, but they are not  
8 people that work out of those particular buildings or this  
9 particular building.

10 Eventually, people who are responsible for this building,  
11 who worked in the building, did respond, but that was much  
12 later.

13 Q. Were you eventually able to bring it under control?

14 A. The fire, yes.

15 Q. Could you take a look at Exhibit 321, a photograph?

16 A. Sure.

17 Q. Do you recognize that?

18 A. That looks an awful lot like looking through the window of  
19 one of the labs on the lower level of the building on the  
20 south side.

21 Q. Was there a library related to this?

22 A. There was a library in this cluster of buildings. It was  
23 not in this specific location, I believe.

24 MR. BARTLETT: Offer Exhibit 321.

25 MR. BLOOM: No objection.

1 THE COURT: Admitted.

2 (Exhibit No. 321 admitted.)

3 BY MR. BARTLETT:

4 Q. This is obviously after the fire was out?

5 A. Yes.

6 Q. How long did you remain on the scene?

7 A. Well, I arrived at approximately 3:33 hours, and I  
8 indicated in my log here that I probably left around 8:30 or  
9 9:00.

10 Q. The following morning?

11 A. Yes, that morning.

12 Q. That morning, I should say?

13 A. Yes.

14 Q. Could you take a look at Government's Exhibit 314?

15 A. Sure.

16 Q. Do you recognize that?

17 A. Yes, I do. That is the horticulture center, what's left  
18 of it.

19 MR. BARTLETT: Offer 314.

20 MR. BLOOM: No objection.

21 THE COURT: I believe it's already been admitted.

22 BY MR. BARTLETT:

23 Q. When you were at the scene, did you have a command center  
24 that you maintained, or were you moving around the entire  
25 time?

1   **A.**  No. We like to have the incident commander remain at a  
2   central spot, in one spot. We call that the command post.  
3   That typically is at my vehicle, which I responded in. It was  
4   placed on the southeast aspect of the building in the parking  
5   lot.

6   **Q.**  It obviously isn't shown in this picture. Where would it  
7   be in relation to this picture? The nearest end to us on the  
8   right, or the far end on the left?

9   **A.**  If you were to back up from the photographer and side step  
10  to the right, back up maybe 100 feet and side step to the  
11  right 100 feet, you would be in about that location.

12  **Q.**  Take a look at photo 315. Do you recognize that?

13  **A.**  That's definitely the urban horticultural building.

14               MR. BARTLETT: Offer 315.

15               MR. BLOOM: No objection.

16               THE COURT: Admitted.

17                               (Exhibit No. 315 admitted.)

18  BY MR. BARTLETT:

19  **Q.**  You talked before that one of the problems you had with  
20  this fire was the lattice work. Do you recognize that?

21  **A.**  Yes. That is it right there.

22  **Q.**  If you could maybe touch the screen and explain to the  
23  people what we are talking about.

24  **A.**  I will try and draw a circle there. That lattice work is  
25  made out of cedar. It's just an architectural feature.

1 However, if a fire were to involve that, cedar being very  
2 easily ignited and burning hot, it would, from the lower end,  
3 burn up very rapidly and involve the attic area and soffits  
4 that I was speaking of.

5 Q. Photo 316. Do you recognize that?

6 A. Yes, I do.

7 MR. BARTLETT: Offer 316.

8 THE COURT: Previously admitted. Some of these have  
9 been already admitted. Just go ahead and put them up.

10 BY MR. BARTLETT:

11 Q. If you hit the lower left screen, you can get rid of that  
12 circle.

13 When you first got to the fire scene, was there anything  
14 about the fire that raised suspicion in your mind about where  
15 the origin was?

16 A. Well, obviously it was on the south side. That's where,  
17 really, the only fire was that I could see and detect. I  
18 couldn't tell if it ignited inside or from the outside, upon  
19 my arrival.

20 Q. It had already spread?

21 A. It had spread considerably, yes. There was a large volume  
22 of fire that you could see from over the roof.

23 Q. Finally, Exhibit 319, which I don't think has been  
24 admitted. I don't believe this has been admitted.

25 Do you recognize that?

1   **A.** It certainly looks like the urban horticultural fire, the  
2 construction and features and so forth.

3               MR. BARTLETT: Offer 319.

4               MR. BLOOM: No objection.

5               THE COURT: Admitted.

6                               (Exhibit No. 319 admitted.)

7 BY MR. BARTLETT:

8   **Q.** Looking through the very center lowest window, do you see  
9 a library section back there, what appears to be books?

10   **A.** I do see books.

11   **Q.** Were you involved in -- did you have any discussions  
12 during the time that you were fighting the fire about the  
13 library, with individuals from the University of Washington,  
14 and did you take any steps to try to protect the books there?

15   **A.** Yes. Like I said, eventually members who were responsible  
16 and worked in the building responded, and I spoke to them at  
17 the command post. They indicated that there was a library in  
18 that building cluster and that it contained valuable books  
19 and, of anything, they would really like to try and save that.  
20 This library was not initially involved in the area that I  
21 noticed on fire upon my arrival.

22   **Q.** What did you do? I assume clearly water was a concern for  
23 you?

24   **A.** Well, yes. We set up what we call a defensive operation  
25 to try and protect that section of the building after we

1 decided that the hazardous materials issue was not as great a  
2 concern as we had initially thought, and therefore I allowed  
3 people into the part of the building that was uninvolved in  
4 order to isolate the uninvolved part of the building from the  
5 part of the building that was involved in the fire. The  
6 purpose was to just draw a line in the sand so it wouldn't get  
7 past us and into the library area.

8 Q. And you did that?

9 A. We did that with various strategy and techniques that we  
10 use.

11 MR. BARTLETT: No further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BLOOM:

14 Q. Good morning --

15 A. Good morning.

16 Q. -- Chief Lindahl, is it?

17 A. That's correct.

18 Q. I am Robert Bloom. I am one of the lawyers for Briana  
19 Waters in this case.

20 A. All right.

21 Q. I just have a few questions for you.

22 This report that you have in front of you, 310-A, is it  
23 fair to say that you do your best, based on your notes and  
24 your recollection, to make it as accurate as possible?

25 A. Yes.



1 Q. You do that, it's fair to say, so that in the future, such  
2 as now, if you need to refer to it to refresh your  
3 recollection, you'll have accurate information?

4 A. Yes. That's part of the purpose of it.

5 Q. Now, yesterday when Lieutenant Priest testified, there was  
6 an issue that came up --

7 MR. BLOOM: Can I now offer -- there's a consent  
8 apparently --

9 MR. BARTLETT: I have no objection to the report --  
10 the police report that Mr. Bloom was referencing yesterday in  
11 his cross-examination.

12 THE COURT: All right. What was the number on it,  
13 Mr. Bloom?

14 MR. BLOOM: I think it's A-178.

15 THE COURT: All right.

16 MR. BLOOM: May I have a copy so I can put it up?  
17 Thank you.

18 THE COURT: Admitted.

19 (Exhibit No. A-178 admitted.)

20 BY MR. BLOOM:

21 Q. Do you know if there came a time -- and maybe it's  
22 routine -- when the University of Washington Police Department  
23 would interview one or more of the firefighters to just get  
24 the facts to complete their package, their report?

25 A. Well, in the locale that I work in, we do often interact

1 with the UW Police. I suppose they could come to us  
2 informally, at least, and ask us questions about an incident  
3 that we are responding to.

4 Q. I would like you to take a look, if you would, at the  
5 document that's in front of you. If you'll notice, on the  
6 second line, it says that, "At approximately 0415 hours,  
7 Station 38 responded to an alarm."

8 A. Yes.

9 Q. Based on your information, that's probably just a typo, a  
10 typographical error, because that's not what happened, right?

11 A. At 0415 hours, that corresponds very closely to the -- my  
12 request for a 311 response. That's that third level alarm  
13 bringing a lot more manpower to the fire scene.

14 Q. If you go back to the very first page of your report --

15 A. Uh-huh.

16 Q. -- and you look at item No. 3 --

17 A. Yes.

18 Q. -- it indicates that at 3:27 in the morning, E-38  
19 responded.

20 A. Yes.

21 Q. Engine 38?

22 A. Yes, it does say that.

23 Q. So that was a quick response?

24 A. Yes.

25 Q. A five-minute or so response?

1   **A.**   Yes.

2   **Q.**   So that if somebody looked at this, what I am pointing  
3   to --

4   **A.**   Yes.

5   **Q.**   -- that's not what happened with E-38.   E-38 did respond,  
6   but looking at this report, it would be reasonable to think  
7   that they didn't respond until 4:15 in the morning.

8   **A.**   You could interpret it that way.   They were certainly on  
9   scene at that time of the morning, but yes, I would assume  
10   that's a typo or some sort of error.

11   **Q.**   All right.   That's all I really wanted to establish.  
12   Thank you.

13       Let me just ask you a couple other questions.

14       The building, would you describe it as a brick building or  
15   a wood building, or how would you describe it?

16   **A.**   Wooden construction.

17   **Q.**   It would be inaccurate to describe it as largely brick; is  
18   that correct?

19   **A.**   Yes.   I don't recall any brick on the building.   I would  
20   have to review and look at the pictures.   There may have been  
21   brick facade on parts of it.

22   **Q.**   Just a few more questions.   Needless to say, this is  
23   almost a silly question, but fires are dangerous?

24   **A.**   That is true.

25   **Q.**   And dangerous for what's inside the building, possibly

1 people inside the building and for firefighters as well?

2 A. That is true.

3 Q. Do you know the name Lacey Philabaum?

4 A. I saw it written on a sheet of paper this morning with an  
5 itinerary of today's activities. The last name, not the first  
6 name.

7 Q. Philabaum?

8 A. Yes.

9 Q. Do you know the name Jennifer Kolar?

10 A. I believe I saw that name on that sheet.

11 Q. In your discussions with any of the prosecutors or the FBI  
12 agents, have you been informed that those are two people who  
13 have admitted to planning and setting this fire?

14 A. I have not been specifically informed of that information,  
15 but my general thought is that --

16 Q. I am sorry?

17 A. I have a feeling that that is a true statement.

18 Q. Thank you.

19 MR. BLOOM: I have no further questions.

20 MR. BARTLETT: Nothing further, Your Honor.

21 THE COURT: All right. You may be excused.

22 MR. BARTLETT: At this time, the United States calls  
23 Special Agent Jane Stephan to the stand.

24 THE COURT: Let me have you come forward, if you  
25 would, and be sworn.

1 JANE STEPHAN, called as a witness, duly sworn.

2 THE COURT: Take the witness chair.

3 MR. BARTLETT: May I inquire, Your Honor?

4 Yes.

5 DIRECT EXAMINATION

6 BY MR. BARTLETT:

7 Q. Can you tell the members of the jury your first and last  
8 name and spell your last name for the Court Reporter?

9 A. Jane A. Stephan, S-T-E-P-H-A-N.

10 Q. Where do you work, Ms. Stephan?

11 A. I am a Special Agent with the FBI.

12 Q. How long have you worked for the FBI?

13 A. I have worked for the FBI for approximately 16 years.

14 Q. Can you kind of walk us through your career with the FBI?

15 A. I graduated from college from Colorado State University,  
16 and I joined the FBI in April of 1992. Upon graduation from  
17 the FBI Academy, I was stationed in Olympia, Washington, in  
18 July of 1992.

19 In approximately January of 1995, I was then transferred  
20 to the Seattle FBI headquarters. In January of 2000, I was  
21 then assigned to the Joint Terrorism Task Force where I was  
22 the Domestic Terrorism Coordinator and the Evidence Response  
23 Team Leader.

24 Q. What kind of training did you receive during the time you  
25 were with the FBI up to when you became part of the JTTF, the

1 Joint Terrorism Task Force?

2 **A.** During my evidence response team, I have done multiple  
3 trainings in crime scene investigations, fire investigations  
4 and also in particular I received some training from Special  
5 Agent John Comery about fires in the Northwest that have been  
6 attributed to the Animal Liberation Front and Earth Liberation  
7 Front.

8 **Q.** So you knew Mr. Comery who testified earlier this week?

9 **A.** Yes, I know John Comery.

10 **Q.** In addition to the -- what is an Evidence Response Team?

11 **A.** The Evidence Response Team was created similar to that of  
12 the SWAT teams that most police departments and the FBI has to  
13 specialize a group of people trained in collecting forensic  
14 evidence.

15 Instead of just the initial search that we do for like a  
16 white collar case where we just go to get documents, these  
17 folks are actually trained to collect smaller items, to sift  
18 through debris or collect hair and fibers, things that are not  
19 obvious to the naked eye.

20 **Q.** You were part of that team?

21 **A.** Yes, I was.

22 **Q.** If we can kind of go ahead. Are you still with the  
23 Seattle FBI?

24 **A.** No, I am not. I am currently assigned to FBI headquarters  
25 in Washington, D.C., and I work in counter-intelligence.

1 Q. What's your position there?

2 A. I'm a Supervisory Special Agent.

3 Q. Are you about to get a promotion?

4 A. Yes, as a matter of fact, I am. Thank you.

5 Q. Well, what's your position going to be in March?

6 A. I will be the Unit Chief of the Arabian Peninsula Unit in  
7 the global section.

8 Q. Can I direct your attention to Monday, May 21, 2001?

9 A. Yes.

10 Q. Were you working that day?

11 A. Yes.

12 Q. Did there come a point in time when you heard about a fire  
13 that occurred at the Center for Urban Horticulture at the  
14 University of Washington?

15 A. Yes. I was driving on my way to work, and I was listening  
16 to the news when I heard over the news that there had been a  
17 fire earlier in the morning at the University of Washington.

18 The news further went on to describe that the fire had  
19 been at the Center for Urban Horticulture where, at that  
20 point, I knew for sure that my day had changed because I  
21 was -- I could pretty much assume that --

22 MR. FOX: I would object, Your Honor, to assumptions.

23 THE COURT: Just what she did.

24 BY MR. BARTLETT:

25 Q. You heard it was the Center for Urban Horticulture?

1   **A.**   Yes, I did.

2   **Q.**   What did you do after you heard that?

3   **A.**   I went to the office to talk with other folks in the  
4 office about the fire and that it was at the Center for Urban  
5 Horticulture. My partner, Lee Yates, had received a phone  
6 call from S.P.D. Sergeant Crowe who gave us an update on the  
7 fire, and at that point Special Agent Yates and myself went to  
8 the fire, about 10 a.m.

9   **Q.**   Does the FBI normally investigate fires?

10   **A.**   Typically -- well, we investigate things that are of --

11           MR. FOX: Your Honor, I am going to object on  
12 relevancy.

13           THE COURT: I think she can answer that yes or no.

14   **A.**   Yes, we do.

15   BY MR. BARTLETT:

16   **Q.**   What did you do when you got to the fire scene at the  
17 Center for Urban Horticulture?

18   **A.**   Upon arriving at the scene, the first thing I saw was the  
19 firefighters were still there finishing their work. The  
20 building was clearly -- had a fire. Parts of it were still  
21 smoldering.

22       As I walked around to the south side of the building, you  
23 could clearly see that there was one office that sustained a  
24 significant amount of fire damage.

25   **Q.**   Did you find out what office that was?



1     **A.** Yes, that office belonged to Professor Toby Bradshaw.

2     **Q.** Did you talk to Professor Bradshaw?

3     **A.** Yes, I did.

4     **Q.** What did he tell you?

5             MR. FOX: Objection, hearsay.

6             THE COURT: What was the question?

7             MR. BARTLETT: What did he tell you? I will  
8 withdraw, Your Honor.

9             THE COURT: Well, let me ask you this: This  
10 professor will be testifying?

11             MR. BARTLETT: He will.

12             THE COURT: Then I think she can go ahead and answer  
13 it. Just let him do his own answering.

14 BY MR. BARTLETT:

15     **Q.** Did you also talk with Tom Hinckley?

16     **A.** Yes, I did. We spoke to Tom Hinckley earlier in the day.  
17 When I was speaking with Seattle Fire Captain Cringele and  
18 Seattle Police Department Sergeant Crowe, Mr. Hinckley  
19 introduced himself to us and explained he had some very  
20 valuable and rare books in the library --

21             MR. FOX: I object to the hearsay.

22             THE COURT: Just a minute. I am going to have her  
23 adjust the mike, so we can make sure we hear you.

24             What was the issue here?

25             MR. FOX: Again, Your Honor, it's our position that

1 limited background is fine, but I am objecting to extensive  
2 narrative about what other people have said.

3 MR. BARTLETT: I am not going to have an extensive  
4 narrative.

5 THE COURT: All right.

6 BY MR. BARTLETT:

7 Q. What did Mr. Hinckley tell you?

8 A. Mr. Hinckley advised that there was some very rare and  
9 valuable books in the library that he would like to rescue  
10 from the fire damage.

11 Q. Why was he talking to you about it? Do you normally let  
12 people take things out of the scene?

13 A. No, clearly we do not. At that point, we considered it a  
14 crime scene and we did not want anybody going into the fire  
15 scene. The portion that he was talking about had only  
16 suffered some soot and water damage, therefore we let him go  
17 in and rescue those books.

18 Q. What about the rest of the scene?

19 A. The rest of the scene was contained and sealed and only  
20 investigators were allowed in.

21 Q. Was there anyone from the Bureau of Alcohol, Tobacco &  
22 Firearms there?

23 A. Yes. Later in the day, at about 1:00 p.m. we all met back  
24 at the scene, and I met with ATF Agent Doug Krogh. At that  
25 time, also we talked with Captain Pringle again from Seattle

1 Fire Department and Sergeant Crowe -- I am sorry, University  
2 of Washington Police Detective Rich Lewis -- And we discussed  
3 at that time our procedure for investigating the scene.

4 Q. What was the plan that you came up with?

5 A. At that point, since it was apparent that the fire had  
6 been an arson, Special Agent Doug Krogh was able to secure a  
7 dog from -- an accelerant dog to come down from British  
8 Columbia to assist in the fire investigation. Although, at  
9 that time we did not need a dog to smell the gasoline that was  
10 apparently used in the fire.

11 Q. You could smell it?

12 A. I could smell it.

13 Q. Did you eventually get the dog down from British Columbia?

14 A. Yes. The dog arrived about three hours later. During the  
15 time when we were waiting for the dog, I had another  
16 conversation with Professor Toby Bradshaw. He had mentioned  
17 that he and a friend of his had seen some snake cages that he  
18 knew that were to be in his office the night before.

19 So during those three hours we were waiting for the dog,  
20 we went over and looked at the snake cages that were under the  
21 tree and we collected those as evidence as well.

22 Q. What happens after the dog comes down? Are you actually  
23 there?

24 A. Yes. The dog arrived on the scene, and we decided that we  
25 will start systematically from the outside and work our way

1 in. The dog was led around the outside of the building and  
2 hit positively indicating that there was an accelerant present  
3 in three areas outside office A17, which was Toby Bradshaw's  
4 office. At that time, we collected samples of the area where  
5 the dog hit and proceeded to move inside the building.

6 **Q.** What happened when you moved inside the building?

7 **A.** Inside the building, as we walked down the corridor, the  
8 dog immediately hit as it got to office A17. As we turned the  
9 corner to collect a sample from where the dog hit, myself,  
10 Seattle Fire Department Hunton and Carruthers, we saw what  
11 appeared to be a flare with wires attached to it.

12 **Q.** Where was this?

13 **A.** Right as you walk in the doorway, there's a lateral filing  
14 cabinet to the left up against the hallway wall, and there  
15 was -- the wire with the flare -- the wires were going up into  
16 the drawers, the drawers had been pulled open and the wires  
17 were on top of that, and then the wires went down from the  
18 flare into what was a melted plastic container-like thing that  
19 was melted.

20 **Q.** When you say you walked in the door, what door were you  
21 walking into?

22 **A.** We were walking through the door that entered into A17,  
23 Toby Bradshaw's office.

24 **Q.** If you could take a look at Exhibit 303, which has already  
25 been admitted. Do you recognize this?

1 **A.** Yes, I do.

2 **Q.** With regard to your investigation, can you just point out  
3 where the Center for Urban Horticulture is?

4 **A.** The Center for Urban Horticulture is right here. It's  
5 actually this whole group of buildings. The actual main part  
6 of the fire was right there -- sorry.

7 That's not right either.

8 Right there, in this part. Oops. It's touchy.

9 But anyway, this whole section of buildings right there is  
10 the actual Center for Urban Horticulture, and the majority of  
11 the fire damage was right there.

12 **Q.** If you could take a look at Exhibit 314, which has also  
13 already been admitted.

14 **A.** That would be the south side of the building where the  
15 main part of the damage was done.

16 **Q.** You can see what appears to be yellow tape going around  
17 it. Do you see that in the picture?

18 **A.** Yes.

19 **Q.** What is that?

20 **A.** That's crime scene tape.

21 **Q.** Did you have any part in putting up that crime scene tape?

22 **A.** No, I believe that tape was actually already put up by the  
23 fire department when we arrived.

24 **Q.** If you could look at 316. Do you recognize that?

25 **A.** Definitely. That's a head-on shot of the south side of

1 the Center for Urban Horticulture.

2 Q. What are we looking at right in the center?

3 A. The very center office without windows in it is office  
4 A17, Toby Bradshaw's office.

5 Q. You can look at what has not been introduced but is in  
6 front of you, it's Government Exhibit 325-A.

7 Do you recognize that?

8 A. Yes, this is a photograph of where the snake cages were  
9 found.

10 MR. BARTLETT: Offer 325-A.

11 THE COURT: I think it's previously been admitted.

12 THE CLERK: Yes.

13 MR. BARTLETT: I'm sorry.

14 A. The snake cages are right there.

15 BY MR. BARTLETT:

16 Q. This is what you and Mr. Bradshaw talked about?

17 A. Yes, exactly.

18 Q. If you look behind you on the floor, do you see those  
19 snake cages or snake boxes, I should say?

20 A. Yes, I do.

21 MR. BARTLETT: This has been marked as Government's  
22 Exhibit 327, Your Honor.

23 BY MR. BARTLETT:

24 Q. Do you recognize those?

25 A. Yes, I do.

1 Q. Did you collect them?

2 A. Yes, I did.

3 Q. Is that how they looked?

4 A. I don't recall them having all the soot on them. I am  
5 assuming that must have come from the other evidence, because  
6 they were clearly put out there to avoid the fire.

7 MR. BLOOM: I didn't hear you.

8 A. They were clearly put outside to avoid the fire because  
9 they were in the fire -- in the office before.

10 MR. BARTLETT: Offer 327.

11 MR. BLOOM: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 327 admitted.)

14 BY MR. BARTLETT:

15 Q. During this first day, May 21st, do you and part of your  
16 team actually collect items at the scene?

17 A. Yes, we did. During the initial part of the search, we  
18 collected 12 items that evening.

19 Q. And those two snake boxes were items 1 and 2?

20 A. Yes, they were.

21 Q. If you'll look at Exhibit 318.

22 A. I don't have that up here.

23 Q. I believe that's already been admitted.

24 Do you recognize that?

25 A. Yes, I do. That's the hallway where we entered into the

1 bui l di ng.

2 Q. Going down toward Toby Bradshaw's office?

3 A. Yes. The door entering into Toby Bradshaw's office would  
4 be on the left side, on this side.

5 Q. Exhibit 320, which I believe is in front of you --

6 A. I don't have 320.

7 Q. -- do you recognize that?

8 A. Yes, I do.

9 Q. What is that?

10 A. A picture taken from outside looking in. As you look in,  
11 you can see the door frame and then the interior window that  
12 was leading out to the hallway.

13 MR. BARTLETT: Offer 320.

14 MR. BLOOM: No objection.

15 THE COURT: Admitted.

16 (Exhibit No. 320 admitted.)

17 BY MR. BARTLETT:

18 Q. Can you explain what we are looking at?

19 A. I am taking the picture from the outside looking in, and  
20 this right here is the door frame. These are the windows that  
21 look out into the hallway that we previously saw.

22 Q. Exhibit 321?

23 A. I don't have that.

24 THE CLERK: It's been admitted.

25 BY MR. BARTLETT:



1 Q. What are we looking at here?

2 A. Another picture taken from outside looking in. It would  
3 be the west wall of his office.

4 Q. Also outside looking in?

5 A. Also from outside looking in.

6 Q. And Exhibit 322?

7 MR. BARTLETT: I think it's already been admitted,  
8 Your Honor.

9 THE COURT: No, it has not.

10 A. 322 is also a picture looking at the rubble from inside  
11 looking out.

12 MR. BARTLETT: Offer 322.

13 MR. FOX: No objection.

14 THE COURT: Admitted.

15 (Exhibit No. 322 admitted.)

16 A. You can see the sunlight from outside up here, and this is  
17 from -- looking inside from the hallway.

18 BY MR. BARTLETT:

19 Q. Is that how it looked when you got there on May 21st?

20 A. Yes, it did.

21 Q. Was there a lot of water?

22 A. There was a lot of water, yes.

23 Q. Exhibit 323, do you recognize that?

24 A. Yes. 323 is a photograph of the dog that -- the dog and  
25 the dog handler that came down from British Columbia, that

1 came to assist us in the fire investigation.

2 MR. BARTLETT: Offer 323.

3 MR. FOX: No objection.

4 THE COURT: Admitted.

5 (Exhibit No. 323 admitted.)

6 BY MR. BARTLETT:

7 Q. Where are we looking?

8 A. The south side of the building right outside Toby  
9 Bradshaw's office. This right here would be Toby's office.

10 Q. Is that an area where you recovered items on May 21st?

11 A. Yes, it is.

12 Q. Is that because of what the dog is doing?

13 A. That's correct. We had the dog work from the outside in,  
14 so we wanted to make sure that we systematically started the  
15 dog in a place that was neutral from outside and working in.

16 Q. During the time that you are there on May 21st, obviously  
17 you or someone else is taking pictures of what's going on?

18 A. Yes, that's correct.

19 Q. How is it that you go about collecting evidence?

20 A. First, what we do is we observe -- we first take pictures  
21 of everything that we see before we've entered the scene to  
22 look further in detail, and then as we come upon the evidence,  
23 for example, the flare that we saw with the wires hanging out,  
24 clearly that was something that did not fit in an office. So  
25 that was what clued us in that that was something we wanted to

1 collect.

2 We try to take a picture so you can see how it looked as  
3 we saw it at the scene, and then we take a picture of it on  
4 like a white sheet of paper if we can, or we remove it from  
5 where it was to take a better picture of it.

6 Q. Did you take steps to try and prevent you and other  
7 investigators from contaminating the scene?

8 A. Yes. Anybody entering or exiting the scene had to wash  
9 their boots with soapy water. We also -- every time we  
10 collected evidence, like the samples outside, we washed those  
11 tools off with soapy water as well.

12 Q. When you collected evidence, were you using your bare  
13 hands or did you have gloves on?

14 A. No, I used gloves.

15 Q. If you could step down and take a look at what's been  
16 marked as Government's Exhibit 330-A and tell me if you can  
17 recognize that.

18 A. 330-A?

19 Q. Is it the plastic bag in front of you?

20 A. Is it item 7? Yes, the 330-A.

21 Q. Can you take that up to the witness stand and tell me if  
22 you recognize that and how you recognize it, if you do.

23 A. I do recognize this. This was the melted plastic. It  
24 looked like maybe the rectangular pail that we found that the  
25 wires were attached to. It was actually kind of in the water.

1 The melted plastic thing is actually still even now attached  
2 to carpet and we had to cut around the carpet to get it out.

3 Q. When did you first see that?

4 A. We saw that after we saw the flare and the wires and went  
5 further down to see where the wires were leading to, and  
6 that's where I found the plastic.

7 Q. This is on May 21st?

8 A. Yes, it is.

9 Q. What did you do?

10 A. At that time, we took the best photographs we could in  
11 place, and then we collected it and we put this particular  
12 piece in a large over-packed container.

13 MR. BARTLETT: I would like to offer Government's  
14 Exhibit 330-A.

15 MR. FOX: No objection.

16 THE COURT: Admitted.

17 (Exhibit No. 330-A admitted.)

18 BY MR. BARTLETT:

19 Q. I believe in front of you there is a photograph, 328.  
20 Tell me if you can recognize that.

21 A. Yes. This is a photograph of when we took a photo of that  
22 particular item in place where we found it.

23 MR. BARTLETT: Offer 328.

24 MR. FOX: No objection.

25 THE COURT: Admitted.

1 (Exhibit No. 328 admitted.)

2 BY MR. BARTLETT:

3 A. The item that was in the plastic bag is right here.

4 Q. You said it was actually -- you had to cut the carpet out?

5 A. Yes, that's correct. It was melted to the carpet.

6 Q. What is it that we are looking to -- it would be the left  
7 of the photograph, the opposite side of your hand?

8 A. Right there?

9 Q. Yes.

10 A. That's the open filing cabinet drawer that the other wires  
11 went up into.

12 Q. If you could step down and take a look at what's been  
13 previously marked as Government's Exhibits 333, 336 and 339,  
14 which I think were your items 9, 10 and 12.

15 A. Yes. This is item 9, 10 and 12 on my log sheet.

16 Q. Taking them one at a time, you said 331 -- excuse me --  
17 Exhibit 339.

18 A. Yes.

19 Q. Do you have that? Now, was there a metal pail when you  
20 recovered this?

21 A. Was there what?

22 Q. Was there a metal pail? Was that part of your recovery?

23 A. No. This is a can that we actually used to preserve the  
24 evidence in. It's an unlined paint can.

25 Q. So as you recovered things, you put it in there?

1   **A.**   Correct.   The best way to handle evidence from a fire,  
2   especially with the fuel that we could smell, would be to put  
3   it in a paint can.

4   **Q.**   You could smell fuel at this point?

5   **A.**   Yes, heavily.

6               MR. BARTLETT:   Offer 339.

7               MR. FOX:   Can the witness explain what is inside the  
8   can?

9               THE COURT:   What are you saying?   I don't understand  
10   you.

11              MR. FOX:   No objection.

12   **A.**   Inside this particular can is a digital clock battery, a  
13   clock face and other small electrical components that we found  
14   on the top of that filing cabinet.

15              MR. FOX:   Thank you.

16                               (Exhibit No. 339 admitted.)

17   BY MR. BARTLETT:

18   **Q.**   And Exhibit 336.

19   **A.**   336 was -- again, we put the evidence in a paint can, and  
20   it was more wires and a 9-volt battery that were found on top  
21   of the filing cabinet.

22              MR. BARTLETT:   Offer 336.

23              THE COURT:   No objection.   Admitted.

24                               (Exhibit No. 336 admitted.)

25   BY MR. BARTLETT:

1 Q. Finally, 333.

2 A. 333 was more wires and unidentified electrical components  
3 that were found in the drawer.

4 MR. BARTLETT: Offer 333.

5 MR. FOX: No objection.

6 THE COURT: Admitted.

7 (Exhibit No. 333 admitted.)

8 BY MR. BARTLETT:

9 Q. Could you take a look at a photo that I believe is in  
10 front of you, Exhibit 331?

11 Do you recognize that?

12 A. Yes. That's the open filing cabinet drawer where we found  
13 all those wires and electrical components.

14 Q. The three items you just talked about?

15 A. Yes.

16 MR. BARTLETT: Offer 331.

17 MR. FOX: No objection.

18 THE COURT: Admitted.

19 (Exhibit No. 331 admitted.)

20 BY MR. BARTLETT:

21 Q. Can you point out -- I realize we are looking at a fairly  
22 tough photograph. Can you point out any of the items you  
23 recovered?

24 A. Well, it is difficult to see the items. That's why we  
25 take them out and put them out on a piece of white paper, but

1 right here you can see some of the wires that were going down.  
2 It's hard to see within the ashes and whatnot, but right on  
3 top of here is where we found the clock face and batteries.

4 Q. As we look at this photograph, at least it appears in the  
5 bottom right-hand corner that we have a date that does not  
6 match up with May 21st?

7 A. That is correct. I apologize. I am pretty good at taking  
8 photographs, but the data back on the back of those cameras I  
9 have yet to be able to get the date changed on those, so my  
10 apologies. That's my mistake.

11 Q. Can you take a look at Exhibit 337? It's also a  
12 photograph?

13 A. Yes.

14 Q. Do you recognize that?

15 A. Yes. Those are the pieces that we found in the top of the  
16 drawer. We put them on a piece of white paper so you could  
17 see them better.

18 MR. BARTLETT: Offer 337.

19 MR. FOX: No objection.

20 THE COURT: Admitted.

21 (Exhibit No. 337 admitted.)

22 A. Right here is the digital clock face and then the smaller  
23 pieces were electrical components.

24 BY MR. BARTLETT:

25 Q. Could you look at Exhibit 308, which I believe is a



1 di agram?

2 **A.** Yes.

3 **Q.** Do you recognize that?

4 **A.** Yes. This is a drawing of where the furniture items were  
5 placed inside Toby Bradshaw's office.

6 MR. BARTLETT: Offer 308 for illustrative purposes.

7 MR. FOX: No objection.

8 THE COURT: Admitted.

9 (Exhibit No. 308 admitted.)

10 BY MR. BARTLETT:

11 **Q.** Can you give us a perspective; where's the interior door  
12 that you walked through?

13 **A.** The interior door that we walked into the office is right  
14 there, and we walked in and right here is where we found the  
15 plastic melted pail, and in the upper filing cabinet drawer is  
16 where we found the electrical components and the wires.

17 **Q.** How many total items did you recover on that first day?

18 **A.** On the first day, we recovered a total of 12 items.

19 **Q.** What time did you end your work that night?

20 **A.** Approximately 8 p.m., Seattle Fire Department Captain  
21 Pringle called the search and said we would resume the next  
22 day in the morning.

23 **Q.** Did you take any steps to secure the scene overnight?

24 **A.** Yes, we did. University of Washington Police had already  
25 put up a barricade fence around the whole scene, and they

1 stayed with the scene all night to make sure that there were  
2 no intruders.

3 Q. Did you come back the next day?

4 A. Yes, I did.

5 Q. By yourself?

6 A. No. The second day the entire FBI Evidence Response Team  
7 arrived with me, along with ATF Mark Stites, Art Ahern and I  
8 believe also University Police Department Rich Lewis was there  
9 and Ed Butler.

10 Q. What did you do the second day?

11 A. The second day, as we've seen the evidence from the first  
12 day, the second day we are going to do an even more thorough  
13 search, pretty much empty the entire room to basically leave  
14 no stone unturned.

15 We want to make sure that we have the actual cause of the  
16 fire and that we've found every item possible that we could to  
17 put the devices back together.

18 Q. Did you write a report relating to your search of May  
19 22nd?

20 A. Yes, I did.

21 Q. Make a mistake on it?

22 A. Yes, I did make a mistake on my report.

23 Q. Can you explain that?

24 A. On my report, within the body of the report, I  
25 inadvertently used June instead of May. However, on the

1 bottom of my report where it says investigation on, I have May  
2 22, 2001 and the date that the report was dictated was May 30,  
3 2001.

4 Q. When did you begin the search on May 22nd?

5 A. We began at roughly 9:00 in the morning.

6 Q. How many items did you collect that second day?

7 A. The second day, we collected 76 items.

8 Q. With regard to all of those items, the 12 you had the  
9 first day, the 76 you get the next day, all 88, what happens  
10 to them?

11 A. All 88 items were then -- at the conclusion of each day,  
12 they were all secured in the FBI space. Once we had all 88  
13 items together, I sent everything back to the FBI Laboratory  
14 for their analysis.

15 Q. Where is that?

16 A. Washington, D.C.

17 Q. Can you take a look at what's been marked as Government's  
18 324, a photograph that's in front of you?

19 A. Yes.

20 Q. Do you recognize that?

21 A. Yes, that's the search on the second day, May 22nd.

22 MR. BARTLETT: Offer 324.

23 MR. FOX: No objection.

24 THE COURT: Admitted.

25 (Exhibit No. 324 admitted.)

1 BY MR. BARTLETT:

2 Q. Can you kind of explain what we are looking at?

3 A. Again, here is Toby Bradshaw's office, right there. These  
4 buckets here and here -- I was inside the building and I was  
5 passing them outside through the window to the other members  
6 of my team so as to not contaminate and cross-contaminate.

7 Once outside, they take these buckets of debris and they  
8 would sift them with these sifters over here, and that way we  
9 can find some of the smaller electrical components that we  
10 found.

11 Eventually throughout the day, everything that was in the  
12 office was outside. We had another tarp that we laid  
13 everything out, diagramming somewhat kind of respectively  
14 where all of the items were found in Toby's office.

15 Q. And the white -- I guess it looks like a tarp that's in  
16 the center of the photograph -- what is that?

17 A. Correct. That's the tarp actually where we laid  
18 everything out in the office. We were collecting pieces of  
19 interest and we were separating them on the tarp. Once we  
20 bagged them and put an FBI seal on them, then we would number  
21 them and walk them out to the evidence log.

22 Q. Could you step down and pick up what's been previously  
23 marked as Government's Exhibit 342? I think it's item 47.

24 Do you recognize that?

25 A. Yes, I do.

1 Q. What is it?

2 A. It was some more sifted debris that we recovered on the  
3 second day of the fire investigation.

4 Q. Where did you recover it?

5 A. We recovered this specifically in the northeast corner of  
6 the office A17.

7 Q. Toby Bradshaw's office?

8 A. Yes, correct.

9 MR. BARTLETT: Offer 342.

10 MR. FOX: No objection.

11 THE COURT: Admitted.

12 (Exhibit No. 342 admitted.)

13 BY MR. BARTLETT:

14 Q. Do you also have Exhibit 345, which would be item 58? Did  
15 I say 348?

16 THE COURT: I thought you said 345.

17 BY MR. BARTLETT:

18 Q. That is exactly what I want you to look at.

19 Do you recognize that?

20 A. Yes, I do. This is another melted container that we found  
21 more towards the southwest corner of the room.

22 Q. The room being Mr. Bradshaw's office?

23 A. Yes, in office A17, Toby Bradshaw's office.

24 MR. FOX: Which corner?

25 THE WITNESS: The southwest corner.

1 MR. FOX: Thank you.

2 BY MR. BARTLETT:

3 Q. What did you do and how did you actually recover it? You  
4 talked about the first time that you had to actually cut  
5 carpet around.

6 Did you have to do that again this time?

7 A. Yes. This one still has some carpet attached to it as  
8 well.

9 MR. BARTLETT: Offer Government's Exhibit 345.

10 MR. FOX: No objection.

11 THE COURT: Admitted.

12 (Exhibit No. 345 admitted.)

13 BY MR. BARTLETT:

14 Q. Can you take a look at a photograph in front of you,  
15 Exhibit 343? Do you recognize that?

16 A. Yes.

17 Q. What is it?

18 A. This is a photograph of where we found the second melted  
19 rubber container.

20 Q. The one we were just looking at?

21 A. Yes.

22 MR. BARTLETT: Offer 343.

23 MR. FOX: No objection.

24 THE COURT: Admitted.

25 (Exhibit No. 343 admitted.)

1 BY MR. BARTLETT:

2 Q. Is that how it first looked when you saw it?

3 A. Yes, it did.

4 Q. If you could look at what's already been entered into --  
5 Special Agent Halla can pull up 308 -- the diagram of Toby  
6 Bradshaw's office.

7 What is it that we are looking at? Where was that item  
8 found?

9 A. This item was found in this corner of the office where the  
10 circle is.

11 Q. Thank you. Finally, if you could step down and grab  
12 Exhibit 348, which I believe is item 63.

13 Do you recognize that?

14 A. Yes, I do.

15 Q. What is it?

16 A. This is more debris that was found, metal components that  
17 were found in the southwest corner.

18 Q. Near where you recovered the --

19 A. Right, near where I found the second melted container.

20 MR. BARTLETT: Offer Government's Exhibit 348.

21 MR. FOX: No objection.

22 THE COURT: Admitted.

23 (Exhibit No. 348 admitted.)

24 BY MR. BARTLETT:

25 Q. Once again, if you can look at a photo that's not been

1 admitted into evidence, Exhibit 346, do you recognize that?

2 A. Yes, I do.

3 Q. What is it?

4 A. I don't know exactly what it is. I am not an expert in  
5 metal components, but it appeared to be something that looked  
6 out of place. Right next to it is also what appears to be a  
7 book of matches.

8 MR. BARTLETT: Offer 346.

9 MR. FOX: Agent, you found this at the scene?

10 THE WITNESS: Yes, I did.

11 MR. FOX: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 346 admitted.)

14 A. Right here in my hand is the small electrical components,  
15 and right here is what appears to be a matchbook.

16 BY MR. BARTLETT:

17 Q. In addition to the items that we are actually introducing,  
18 do you have a list of other items that were sent back to the  
19 lab?

20 A. Yes, I do.

21 Q. If we could just go through taking -- did you send item 8  
22 back?

23 A. Yes.

24 Q. What was that and where was it found?

25 A. It was a circular or metal plastic piece on the floor that



1 was near the metal cabinet.

2 Q. Item 22?

3 A. Item 22 was more sifted debris found in the southeast  
4 corner of the floor.

5 Q. Of Toby Bradshaw's office?

6 A. Correct, of Toby Bradshaw's office.

7 Q. Item 26?

8 A. 26 were more debris that were found from the southeast  
9 corner of office A17, Toby Bradshaw's office.

10 Q. Item 48?

11 A. Item 48 was more sifted debris that was recovered from the  
12 southwest corner of Toby Bradshaw's office.

13 Q. Item 56?

14 A. No. 56 was a sample of the accelerant or the gasoline that  
15 was used in the firefighter's chainsaw.

16 Q. Why did you do that?

17 A. We took that as a controlled sample to prove or disprove  
18 that that was the fuel that might have been -- that we smelled  
19 in the office.

20 Q. Item 65?

21 A. Item 65 were ashes that we found in the northeast corner  
22 of the office, Toby Bradshaw's office.

23 Q. Item 67?

24 A. 67 was fuel -- I am sorry, carpet with fuel on it. It was  
25 also recovered from the northwest corner of the office.

1 Q. Why do you say it was carpet with fuel on it? Could you  
2 smell it?

3 A. Oh yes, absolutely.

4 Q. And finally, item 72?

5 A. 72 was more sifting debris from the southwest corner of  
6 Toby Bradshaw's office.

7 Q. You would collect all the items on the second day. Where  
8 do you take them after you collect them?

9 A. As soon as we were done with the search -- we took all the  
10 items that were sealed from the scene, we took them to the FBI  
11 office in Seattle and locked them in the evidence room.

12 Q. And then sent them back to D.C.?

13 A. Then we sent them along with the first 12 items to  
14 Washington, D.C.

15 MR. BARTLETT: One moment, Your Honor.

16 No further questions.

17 THE COURT: All right. Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. FOX:

20 Q. Good morning.

21 A. Good morning.

22 Q. I am Neil Fox. I am one of the lawyers helping Briana  
23 Waters.

24 A. Great. Nice to meet you.

25 Q. Agent Stephan --

1   **A.**   Stephan.

2   **Q.**   Is there a difference between an accelerant dog and an  
3   explosive dog?

4   **A.**   I am not aware. I am not a professional that deals with  
5   dogs in particular. I do know that there are some dogs that  
6   are trained to smell perhaps just drugs and some that are  
7   trained to smell perhaps just gasoline.

8         So in this particular case, ATF Doug Krogh had requested a  
9   dog that was skilled in smelling accelerants.

10  **Q.**   Accelerants -- but do you know of any explosives dogs that  
11  the FBI has?

12  **A.**   I know that the FBI has some, but I don't know them  
13  personally.

14  **Q.**   Now, you are trained to gather evidence; is that correct?

15  **A.**   Yes.

16  **Q.**   And you don't analyze it, right?

17  **A.**   No, I do not.

18  **Q.**   You are not a scientist?

19  **A.**   No.

20  **Q.**   That's why you send stuff off to the lab?

21  **A.**   I was a finance major in college.

22  **Q.**   A finance major?

23  **A.**   Correct.

24  **Q.**   When you gather evidence, it's important to document what  
25  you are doing, right?

- 1   **A.**   Correct.
- 2   **Q.**   You take notes as you go around, take notes about what you  
3   are gathering, right?
- 4   **A.**   Yes, we keep an evidence log depicting what items we found  
5   and where we found them.
- 6   **Q.**   Do you actually take down those notes, or do you have  
7   somebody walking with you?
- 8   **A.**   There's usually somebody walking with me.
- 9   **Q.**   Then you also have cameras to document things as well?
- 10  **A.**   That's correct.
- 11  **Q.**   If you just get the dates right?
- 12  **A.**   That's correct. It's hard to change those.
- 13  **Q.**   But the reason why you have cameras is kind of like a fail  
14  safe from your memory of things, right?
- 15  **A.**   I suppose. I mean, I remember the scene like they are  
16  depicted in the photographs, but we do the photographs to  
17  memorialize actually what happened.
- 18  **Q.**   Then you also have video cameras too, if you need them?
- 19  **A.**   We don't use video cameras in our crime scenes.
- 20  **Q.**   You don't?
- 21  **A.**   I have not.
- 22  **Q.**   Then you write up reports as well, right?
- 23  **A.**   Correct.
- 24  **Q.**   You take your notes and you transfer them to some sort of  
25  typed report?

1   **A.** That's correct.

2   **Q.** When you do that, but for a few typographical mistakes,  
3 you try the best you can to transfer that accurately, right?

4   **A.** That is correct.

5   **Q.** Because if you get transferred to some other posting,  
6 someone else may have to review your reports and see what  
7 happens?

8   **A.** That's correct. That's exactly what happened.

9   **Q.** In fact, in this case you sent your report off to the FBI  
10 lab so they would have your report when they are looking at  
11 all those evidence items?

12   **A.** That's correct.

13   **Q.** Along with all those photographs, right?

14   **A.** We sent them the photographs and our evidence recovery  
15 log. I don't know that at that time I sent them my 302s  
16 specifically detailing what we did on those days.

17   **Q.** But you sent off, so that they would know, based upon your  
18 logs, what they were looking at when they got the materials?

19   **A.** Correct. However, most -- a lot of the items that I found  
20 were sifted debris, and I didn't know exactly what they were.  
21 I just knew that they didn't fit in the office type setting.

22   **Q.** Sure. And the reason why you send sifted debris is that  
23 there might be evidence contained in that debris that may  
24 become apparent down the road?

25   **A.** That's correct.

1 Q. Since we are talking about evidence, we are looking at  
2 perhaps electrical components?

3 A. Correct. Again, I am not an expert in incendiary devices.  
4 Therefore, I collect things that don't seem to fit. So if I  
5 don't know about them, then I collect them and let the lab  
6 determine if they were important or not.

7 Q. There might be other types of trace evidence as well,  
8 right?

9 A. Correct, fingerprints and whatnot.

10 Q. Hairs? Fibers?

11 A. Correct.

12 Q. When you make up your 302 -- what is a 302?

13 A. A 302 is a report depicting what we did during the  
14 investigation on a particular day.

15 Q. What's the purpose of a 302?

16 A. The 302 also memorializes what actions we took during that  
17 day.

18 Q. Does the FBI have regulations about the production of  
19 302s?

20 A. We have guidelines.

21 Q. Do you know what those guidelines say? Have you read  
22 them?

23 A. I have read them, yes.

24 Q. Do they give you instructions about what types of details  
25 to include in the 302s?

1   **A.** Not specific detail. The 302s were designed to depict the  
2 details that happened. You simply -- you take the notes and  
3 go from what your recollection is and you put that into your  
4 report on the account of the activities that happened during  
5 that day.

6   **Q.** The important activities?

7   **A.** Everything that was important to the crime scene, yes.

8   **Q.** Thank you.

9           MR. FOX: I have no further questions.

10          MR. BARTLETT: Nothing, Your Honor.

11          THE COURT: All right. This witness can be excused?  
12 All right. You may step down.

13          Let's take the morning recess at this time and give you a  
14 break. Of course, don't discuss the case. Leave your books  
15 on the chairs. I will have you back in here in about 15  
16 minutes.

17          THE CLERK: All rise. Court will be in recess.

18          (Morning recess.)

19          THE COURT: Ready for the next witness?

20          MR. BARTLETT: We are.

21          (Jury present.)

22          THE COURT: All right. You may be seated.

23          Ready for the next witness?

24          MR. BARTLETT: Your Honor, at this time, the United  
25 States calls Ron Kelly to the stand.

1 THE COURT: All right. Just come forward and raise  
2 your right hand and be sworn.

3 RONALD KELLY, called as a witness, duly sworn.

4 MR. BARTLETT: May I proceed, Your Honor?

5 THE COURT: Yes.

6 DIRECT EXAMINATION

7 BY MR. BARTLETT:

8 Q. Mr. Kelly, could you tell the members of the jury your  
9 first and last name and spell your name for the Court  
10 Reporter?

11 A. Ronald Kelly, K-E-L-L-Y.

12 Q. Where do you work, Mr. Kelly?

13 A. I am employed by the Federal Bureau of Investigation, and  
14 I am assigned to the FBI Laboratory in Quantico, Virginia.

15 Q. What do you do there?

16 A. At the FBI Laboratory, I am assigned in the explosives  
17 unit as an explosives and arson chemist. My duties there  
18 involve the analysis of evidence received from state, local  
19 and federal law enforcement agencies, mainly dealing with the  
20 investigations of fires and explosions.

21 Q. Can you briefly explain to the members of the jury your  
22 educational background?

23 A. Certainly. I was born and raised in the Washington, D.C.  
24 area. I went to the University of Maryland. I graduated in  
25 1977 with a Bachelor of Science degree in chemistry. I



1 continued an additional year. I decided to go into law  
2 enforcement, and I was taking criminology courses for an  
3 additional year at the University of Maryland before being  
4 hired by the FBI in September of 1978.

5 **Q.** When you were first hired by the FBI, where were you  
6 assigned?

7 **A.** My first assignment was with the FBI Laboratory that was  
8 currently in Washington, D.C. I was assigned to the chemistry  
9 toxicology unit as a chemist.

10 **Q.** Since the time that you joined the FBI, have you received  
11 any training in addition to the formal education that you've  
12 just described?

13 **A.** Yes. While at the FBI, I have attended many training  
14 courses that involve the analyses and investigations that we  
15 conduct in the FBI Laboratory, and a lot of that training I  
16 received at our training facility, the FBI academy at  
17 Quantico, Virginia.

18 I also attended numerous courses that are offered by  
19 outside law enforcement agencies, private companies,  
20 instrument companies, that deal with the analysis that I  
21 perform in the laboratory as well as other related-type  
22 courses to my subject matter.

23 Also while at the FBI, I trained under the supervision of  
24 experienced chemists in the various units and received a lot  
25 of on-the-job training as well.

1 Q. Could you estimate how many different courses you've gone  
2 through over the years?

3 A. Oh, my gosh. I have probably attended well over 100  
4 different types of courses, seminars, educational conferences  
5 in the almost 30 years that I have been employed with the FBI  
6 now.

7 Q. Are you a member of any professional organizations?

8 A. Yes. I am a member of several organizations, to include  
9 the International Association of Arson Investigators, American  
10 Academy of Forensic Science, the American Society for Testing  
11 and Materials, to name a few.

12 Q. You talked about going to courses and taking courses  
13 yourself to improve your education. Have you ever taught  
14 courses?

15 A. Yes. More in the last 10, 15 years or so now, I have been  
16 involved with the instructional aspect of forensics. We teach  
17 several courses at the FBI academy related to arson  
18 investigation, explosion investigations, chemical analysis of  
19 evidence from those type of cases, as well as we teach state,  
20 local and other federal law enforcement officers, as well as  
21 do international training now in those subject matters.

22 Q. Can you estimate just in very broad terms, how many  
23 different cases you've worked on as a forensic chemist for the  
24 FBI?

25 A. I probably, on the average, worked on at least 100 cases a

1 year, so if you want to extrapolate that over about 30 years,  
2 I have probably done well in excess of about 300 cases.

3 **Q.** Have you ever testified as an expert in the field of  
4 forensic chemistry?

5 **A.** Yes, I have. I've testified at state and local as well as  
6 federal and international trials, and I believe my number  
7 right now is about 36 testimonies.

8 **Q.** Were you asked as part of your duties at the FBI lab to  
9 analyze various items that Special Agent Stephan and other  
10 individuals collected at the arson scene of the Center for  
11 Urban Horticulture on May 21st and May 22nd?

12 **A.** Yes, I did. I received evidence on several occasions  
13 related to the investigation involved here.

14 **Q.** Can you explain to the members of the jury -- you are back  
15 at the lab, what happens? How do you get evidence and what do  
16 you do?

17 **A.** Typically with the FBI, the laboratory is the central  
18 location and we receive most of our evidence through certified  
19 mail at the FBI. We have an evidence receiving facility,  
20 which receives the initial mailing of the evidence, and then  
21 from that point, the evidence is subsequently delivered to the  
22 various units that are involved with the analysis of that  
23 evidence.

24 At that point, we have many individuals that may be  
25 involved in a large case such as this, so we would have

1 several examiners that are assigned to the case that would  
2 receive evidence from a primary examiner. Thus, I would  
3 receive evidence from the primary examiner in this case,  
4 because I was not the lead forensic individual in the lab.

5 **Q.** Who was the lead in this case?

6 **A.** The lead examiner on this particular case was Don  
7 Sachtleben.

8 **Q.** What did you get and approximately when did you start  
9 working on the case?

10 **A.** The evidence arrived at the FBI lab on May 25th, 2001, and  
11 the first contact I had was the following day, Saturday, May  
12 26, 2001.

13 **Q.** What did you do?

14 **A.** On that particular day, with Mr. Sachtleben, I reviewed an  
15 initial set of evidence, began processing that evidence for  
16 the detection and presence of ignitable liquids and performed  
17 a variety of examinations that day.

18 **Q.** How do you do that?

19 **A.** The particular examinations that I performed, again, was  
20 to detect the presence of ignitable liquids. Ignitable  
21 liquids is another common term that refers to flammable or  
22 combustible liquids. The analysis is fairly straightforward.

23 I take our evidence, which usually comes in in bags or  
24 cans, and we suspend a small piece of carbon strip. Carbon is  
25 a very absorptive material and we spin that in the container.

1 The purpose of that is to absorb any vapors that may be within  
2 that container, a process very similar to you putting a box of  
3 baking soda in your refrigerator to remove the odors from your  
4 refrigerator. That's the purpose of the charcoal strip in the  
5 can.

6 That charcoal strip is sealed within the container, the  
7 bag or the can. It's heated to approximately 85 degrees  
8 Centigrade for several hours, allowed to cool, and then that  
9 charcoal strip after a while is removed. I take a small  
10 amount of a solvent material that removes those absorbed  
11 vapors from that charcoal strip, and then I take a very, very  
12 small portion of that solvent and perform an instrument  
13 analysis on it that we refer to as gas chromatography mass  
14 spectrometry.

15 **Q.** What does that tell you?

16 **A.** Gas chromatography mass spectrometry is a very common and  
17 often-used technique in the laboratory for the analysis of  
18 organic materials. Ignitable liquids are organic materials.

19 Keep in mind, most ignitable liquids -- take, for example,  
20 gasoline -- is not just a single compound. It's a very  
21 complex mixture of well over 400 compounds.

22 So the reason why we use gas chromatography as our  
23 analytical technique is that's a separation technique in which  
24 a complex mixture, such as gasoline, can be separated into the  
25 individual components so that the analyst, such as myself, can

1 more easily recognize the material.

2 Gas chromatography is nothing more than a long tube, sort  
3 of like a garden hose that's about 30 meters long, but it's  
4 the size of a needle, and you would inject that small amount  
5 of solvent from that carbon strip wash at the beginning of  
6 that column, and the compounds go racing through.

7 It's very similar to sort of a marathon race, where you  
8 get all the runners at the beginning of the race and you fire  
9 the gun, and the gun goes off and those 500 runners start  
10 running. Well, the fastest and swiftest are going to cross  
11 the finish line first. The slowest and the more out of shape  
12 ones are going to finish slower and last.

13 That's the same way gas chromatography works, the faster,  
14 swifter molecule compounds come off the column first; the  
15 heavier, slower compounds come off last. So we get a  
16 separation of the many compounds that are in gasoline. That  
17 is the separation part of the technique, the gas  
18 chromatography.

19 The mass spectrometry is an identification of the  
20 technique, so as those runners cross the finish line, in this  
21 case the compounds come out of the chromatograph, they are  
22 analyzed for various mass characteristics. So we can get  
23 molecular weights and certain structural information about the  
24 compounds, which actually allows us to identify the various  
25 compounds that are coming off the gas chromatograph. So it's

1 a very powerful technique that we use for the identification  
2 of ignitable liquids.

3 Q. You did that in this case?

4 A. Yes, that was performed in this case.

5 Q. Taking a look first at Exhibit 330-A which I think is  
6 right beside you in your seat.

7 Do you recognize that?

8 A. Yes, I do.

9 Q. How do you recognize it?

10 A. On each of the items of evidence, there's a laboratory  
11 number. In this case, the laboratory number is 01-0525005.  
12 Also, several days ago, I had the opportunity to review this  
13 evidence, and within the bags itself there are my initials on  
14 some of the subsequent bags.

15 This is a bag that's been used after the analysis to  
16 contain the evidence, which I did not have access to at the  
17 time, or I used myself. The bags that I had encountered are  
18 within the bag as you can possibly see by looking through it.  
19 My initials appeared on those bags.

20 Q. So what did you do with this?

21 A. Again, as I mentioned, this evidence was analyzed for the  
22 presence of ignitable liquids, so a C-strip was suspended  
23 inside the bag, heated, removed and analyzed by gas  
24 chromatography and mass spectrometry.

25 Q. What did you find?

1   **A.**   Within the bag, I identified gasoline or residues of  
2   gasoline.

3   **Q.**   In addition to identified gasoline, were there any other  
4   items within that bag that you performed a chemical analysis  
5   on?

6   **A.**   Yes, there was. Within the bag, there was a noticeable  
7   object that looked very similar to a road flare. A road flare  
8   is a pyrotechnic instrument that we are all familiar with, and  
9   I did an analysis on that particular object just to confirm  
10   that the contents of that were consistent with a road flare,  
11   and they were.

12   **Q.**   What is in a road flare?

13   **A.**   The main pyrotechnic, the red glow that you see that comes  
14   from a road flare, is from a chemical called strontium  
15   nitrate, and that is the chemical that was present within that  
16   flare, within the bag.

17   **Q.**   If you could take a look at what's also been entered into  
18   evidence -- and I think it's beside you -- as Exhibit 345.

19         Once again, do you recognize that?

20   **A.**   Yes, I do.

21   **Q.**   How do you recognize it?

22   **A.**   Again, in a similar way, there is a laboratory number,  
23   01-0525005, and again you can actually see my initials on the  
24   inside of -- on the bag which I actually encountered when I  
25   received the evidence.



1 Q. Once again, what did you do with 345?

2 A. 345 was analyzed in an identical manner as the previous  
3 one using the carbon strip techniques and gas chromatography  
4 mass spectrometry.

5 Q. What did you find?

6 A. Again, gasoline or residues of gasoline were identified.

7 Q. This time you are going to have to step off. If you look  
8 at the boxes down below, I believe you'll see that there is  
9 one marked 342. If you could pull the paper bag out that is  
10 marked as 342.

11 Do you recognize that, Mr. Kelly?

12 A. Yes, I do. Again, the laboratory number is on the bag, as  
13 well as on the container. In this case, another set of  
14 initials that I use, called our laboratory symbols. GG, up  
15 there on the can.

16 Q. What did you do with this?

17 A. Again, the same type of analysis for the presence of  
18 ignitable liquid. The carbon strip and gas chromatography was  
19 used on the analysis of this item.

20 Q. What, if anything, did you determine?

21 A. Again, gasoline or residues of gasoline were identified.

22 Q. Without going into other items that we have not physically  
23 entered into evidence, did you perform analysis on other  
24 exhibits that Special Agent Stephan sent back to you?

25 A. Yes. I performed an analysis on approximately 24 items,

1 specifically for the presence of ignitable liquids.

2 Q. I am looking at exhibit -- your exhibit would be Q8.

3 A. Yes.

4 Q. Can you summarize what you found with regard to those  
5 various analyses. Perhaps you can explain -- we are getting  
6 so many numbers here. We have got our exhibit number and then  
7 we have the FBI exhibit number.

8 Do you guys have another type of exhibit number when it  
9 gets to the lab?

10 A. Yes, it does. When the evidence comes into our  
11 laboratory, we assign it an item number with either a "Q"  
12 designation or a "K" designation. In this particular  
13 submission, all the items received a "Q" designation. So I  
14 have items Q1 through approximately Q90-something in this  
15 particular submission.

16 So when I refer to a result in my report, I will mention  
17 something along the line of specimen Q8 was analyzed, and  
18 gasoline or something was identified in that sample.

19 So that's going to be different from the exhibit number  
20 like this one, which is 342.

21 Q. What did your analysis find with regard to the various  
22 exhibits that you analyzed?

23 A. Of the 24 items that I analyzed for the presence of  
24 ignitable liquids, 13 of them were found to be positive for  
25 the presence of gasoline or residues of gasoline.

1 Q. Do you have those Q numbers?

2 A. Yes, I do. They are in a report that I have in front of  
3 me. If I could read that or refer to that.

4 MR. FOX: No objection.

5 THE COURT: All right.

6 BY MR. BARTLETT:

7 Q. In addition to the Q number, does it have the original FBI  
8 number?

9 A. The case file number, is that what you are referring to?

10 Q. Yes.

11 A. Yes, it does. This particular report that I issued was on  
12 June 11, 2001, for the case ID of 266 A-SE-85962, and the FBI  
13 laboratory number of 010525005.

14 Within that report, the 13 items that I found gasoline or  
15 residues of gasoline, those items were Q7, Q8, Q22, Q26, Q49,  
16 Q50, Q56, Q58, Q60, Q67, Q69, Q73 and Q74.

17 Q. Did you also find -- analyze various items where there was  
18 no ignitable liquid?

19 A. That is correct. There were also 11 items which were  
20 found to not contain identifiable ignitable liquids. Those  
21 items were Q4 through Q6, Q29, Q39 through Q44, and Q.

22 MR. BARTLETT: Nothing further, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. FOX:

25 Q. Good morning.

1 A. Good morning.

2 Q. We met outside, didn't we? So it is Agent Kelly?

3 A. No, it's Mr. Kelly.

4 Q. Mr. Kelly. Mr. Kelly, you have a chemistry degree?

5 A. That is correct.

6 Q. But you are not just a chemist, you are also a fire  
7 investigator, right?

8 A. That is one of my skills that I bring to the FBI, that's  
9 correct.

10 Q. As part of being a fire investigator, you also deal with  
11 explosions too, right?

12 A. That's correct.

13 Q. Now, you've published, actually, materials in the field of  
14 fire investigation?

15 A. I have.

16 Q. Now, what is the Technical Working Group for Fire and  
17 Explosives?

18 A. Again, that is a scientific working group that involves  
19 the participation of both fire investigators, explosion  
20 investigators and forensic scientists throughout the country.

21 Q. You are a member of that organization?

22 A. It's a working group, so yes.

23 Q. You are actually an officer, aren't you?

24 A. No, I am not.

25 Q. You are not an officer of one of the subcommittees, a

1 co-chair of one of the committees?

2 **A.** Not unless I have been recently assigned.

3 **Q.** Okay. I saw something on the Internet last night. The  
4 Scene Education and Training Committee?

5 **A.** Okay. Many of these committees have been defunct for a  
6 while. Again, to be quite honest with you, I was not aware  
7 that I was a co-chair of that committee.

8 **Q.** Ronald Kelly from the FBI?

9 **A.** Yeah, yes.

10 **Q.** Is there more than one Ronald Kelly?

11 **A.** No, that would be my name. I am not sure if that is a  
12 typo on that list. But I am a member of that committee, so  
13 that much is absolutely correct.

14 **Q.** I see. You are a member of that committee, and Tom  
15 Thurman is the chair?

16 **A.** Yes.

17 **Q.** But you are a member?

18 **A.** Yes, I am.

19 **Q.** I didn't want to give you more work than you've taken on.

20 So the Technical Working Group for Fire and Explosives, it  
21 has members from the FBI in it, right?

22 **A.** That's correct.

23 **Q.** And from the ATF, there are members on that organization?

24 **A.** That's correct.

25 **Q.** There are private scientists in private practice that are

1 members?

2 **A.** Yes, there are.

3 **Q.** It's actually called TWGFEX, is the acronym?

4 **A.** That it is.

5 **Q.** One of the goals of TWGFEX is to develop professional  
6 development in fire and explosion investigation?

7 **A.** That's true.

8 **Q.** And to provide guidelines for such investigations?

9 **A.** That's correct also.

10 **Q.** To gain national acceptance for its guidelines, right?

11 **A.** This is true.

12 **Q.** Towards that end, is it not true that TWGFEX puts out a  
13 glossary of terms?

14 **A.** There is a glossary of terms that is posted on the TWGFEX,  
15 one of the TWGFEX sites, correct.

16 **Q.** As a scientist, you rely upon this glossary in the course  
17 of your business, right?

18 **A.** Well, I rely on many sources of reference materials. No  
19 single reference material.

20 **Q.** That's one source, right?

21 **A.** That could be a source of reference material I would go  
22 to, yes.

23 **Q.** You have in front of you -- you should have -- what's been  
24 marked for identification as Exhibit A-180. You will have.

25 Take a look at that, skim through it briefly.

1 Can you identify that?

2 **A.** Yes, this is the -- appears to be the posting of the  
3 glossary of terms that appears on the TWGFEX website, yes.

4 BY MR. FOX:

5 **Q.** And I would refer you, on the second page of that  
6 glossary, halfway down that page -- it's true that there's a  
7 definition of the term "bomb" in this glossary; is that not  
8 correct?

9 **A.** That's correct.

10 **Q.** Do you want to read that?

11 MR. BARTLETT: Objection, Your Honor.

12 THE COURT: Where is this headed, Counsel?

13 MR. FOX: Well, I would offer Exhibit A-180 in  
14 evidence.

15 MR. BARTLETT: Objection, Your Honor. I think he  
16 needs to testify whether this glossary is in fact something he  
17 relies on.

18 MR. FOX: He just testified to that.

19 THE COURT: Well, he testified it's one source of  
20 information.

21 MR. FOX: Right. Well, I would offer A-180.

22 THE COURT: I will deal with that at the break, but  
23 it will not be admitted at this time.

24 BY MR. FOX:

25 **Q.** Mr. Kelly, do you have a working definition of the word

1 "bomb" in your professional development?

2 **A.** I have no single working definition, but there are some  
3 general definitions that we use for the term "bomb" itself,  
4 yes.

5 **Q.** Is it true that one of those working definitions is a  
6 device containing an explosive, incendiary or chemical  
7 material designed to explode?

8 **A.** That would be one of the definitions that would describe  
9 the word "bomb," yes.

10 **Q.** That is, in fact, is it not, the definition by the  
11 organization of which you are a member, TWGFEX?

12 **A.** That is a definition used by TWGFEX.

13 **Q.** Again, TWGFEX has law enforcement from many different  
14 agencies participating in it, right?

15 **A.** The participants on TWGFEX come from a very vast variety  
16 of individuals within law enforcement, yes.

17 **Q.** Including individuals such as yourself?

18 **A.** Yes.

19 MR. FOX: Thank you. I have no further questions.

20 THE COURT: All right. Anything further?

21 MR. BARTLETT: Nothing further.

22 THE COURT: All right. This witness can be excused  
23 then?

24 MR. BARTLETT: Yes.

25 Your Honor, at this time, the United States calls Don



1     Sachtleben to the stand.

2                 THE COURT: All right.

3                 Step forward and be sworn.

4                 DONALD SACHTLEBEN, called as a witness, duly sworn.

5                 THE COURT: Take the witness chair, please.

6                                 DIRECT EXAMINATION

7     BY MR. BARTLETT:

8     Q. Would you tell the members of the jury your first and last  
9     name and spell your last name for the Court Reporter?

10    A. Yes, Donald Sachtleben. The last name is spelled  
11    S-A-C-H-T-L-E-B-E-N.

12    Q. Where do you work, Mr. Sachtleben?

13    A. I am a Special Agent with the FBI.

14    Q. How long have you worked with the FBI?

15    A. Just over 24 years.

16    Q. Can you explain your educational background prior to  
17    joining the FBI?

18    A. Yes, sir. I have a bachelor's degree from Northwestern  
19    University and a law degree from DePaul University in Chicago.

20    Q. When did you graduate from the law school at DePaul?

21    A. 1983.

22    Q. What did you do after you graduated?

23    A. Took the bar exam, and then I made application and was  
24    accepted as a Special Agent later that year.

25    Q. Where were you first assigned?

1   **A.**   First assignment was in Pittsburgh, Pennsylvania.

2   **Q.**   How long did you work in Pittsburgh?

3   **A.**   I was there just under two years, about a little over a  
4   year-and-a-half.

5   **Q.**   What were your general duties?

6   **A.**   I was a brand new agent so I had a lot of general  
7   investigative duties. Eventually, I did work some  
8   counter-terrorism and counter-intelligence cases.

9   **Q.**   Were you eventually re-assigned from Pittsburgh?

10  **A.**   Yes. In August of 1985, I was transferred to the San  
11  Francisco division of the FBI.

12  **Q.**   What happened when you got to San Francisco? Can you  
13  explain your work history to these jurors?

14  **A.**   Sure. I was assigned to a counter-terrorism squad in San  
15  Francisco. My job duties included investigating acts of  
16  terrorism, bombing cases, anything in that line.

17  **Q.**   How long were you assigned to that group?

18  **A.**   I was there for just short of 11 years. I left in 1996.

19  **Q.**   During that time, did you become interested in bomb  
20  investigation?

21  **A.**   There were several bombing incidents that took place in  
22  the San Francisco Bay area while I was there, and I was  
23  assigned to do some general investigative work in those cases,  
24  and I guess it kind of spurred my interest a little bit, and I  
25  sought out some further training in the subject.

1 Q. Have you, in fact, received training as to how to conduct  
2 and how to analyze bombs and bomb investigations?

3 A. Yes, sir. Probably the first course I took was in  
4 September of '86. The FBI conducts a one-week basic  
5 post-bombing investigation course. I took that class at our  
6 training academy in Quantico, Virginia.

7 Q. Did you eventually take other courses?

8 A. Yes. In 1990, I sought application and was accepted to be  
9 trained as a bomb technician. That's a four-week class that's  
10 held in Redstone Arsenal in Huntsville, Alabama. That class  
11 covers every aspect of explosives, the rendering safe of  
12 explosive devices or bombs, and so that was my most technical  
13 training in the subject that I initially took.

14 Q. What's a bomb technician?

15 A. In the United States, there are civilian and military bomb  
16 technicians. Obviously, the military bomb technicians largely  
17 deal with military devices, things like that. Civilian bomb  
18 technicians -- there are roughly 3,000 of us, about 140 within  
19 the FBI, we deal with the rendering safe -- that is, I suppose  
20 in the movies they would say the diffusing of bombs. So a  
21 typical thing might be a call for a suspicious item, go try to  
22 evaluate that item and make sure it doesn't cause anybody any  
23 harm.

24 Q. What else are bomb technicians asked to do?

25 A. Quite a bit of training, both receiving training to

1 further our skills and then to provide training. One of my  
2 most common assignments while I was a bomb technician in San  
3 Francisco was to do training classes for local police  
4 departments, for private security sector people, just to give  
5 them a little better understanding of how bombs and explosives  
6 work and how best to protect themselves and their businesses  
7 from them.

8 **Q.** What's your current title?

9 **A.** My current title is Special Agent Bomb Technician, and I  
10 am assigned to the Indianapolis field office of the FBI.

11 **Q.** Have you always been in Indianapolis?

12 **A.** No, I have only been there a little over a year now.

13 **Q.** Where did you go after you left San Francisco?

14 **A.** In 1996, I sought and received a promotion to Supervisory  
15 Special Agent, and I was assigned to the FBI Laboratory, to  
16 the explosives unit.

17 **Q.** What did that involve?

18 **A.** The explosives unit in the Laboratory does the examination  
19 of bomb components. We look at debris after an explosion or a  
20 fire and try to render some forensic opinion as to the items  
21 that were received, whether they constituted a bomb and how  
22 they might have functioned or, in some cases, how they didn't  
23 function.

24 **Q.** What training did you have before becoming a Supervisory  
25 Special Agent back at the FBI Lab in the explosives unit?

1   **A.** Within the explosives unit, you go through a period of  
2   apprenticeship. Regardless of how long you've been in the  
3   field, you work directly under other senior qualified  
4   examiners. You look at cases that they are working on and  
5   receive instruction in them.

6       You do quite a bit of reading, going through all the  
7   literature -- the scientific literature on the subject. I  
8   took quite a few training courses to sort of expand the scope  
9   of my knowledge of explosives and bomb components and how they  
10   work.

11       This lasted a little over a year-and-a-half, just a little  
12   less than two years, that I went through that process. I was  
13   tested while I was in the unit. The other examiners would  
14   give me formal tests on the subject. I had to go through moot  
15   court proceedings where we were put in a situation like this  
16   and asked to explain our findings on test cases.

17       Ultimately, the FBI Laboratory gave me a certification  
18   saying that I was qualified to conduct my own investigations.

19   **Q.** Could you describe some of the major investigations that  
20   you've been involved in over the years?

21   **A.** Probably the first one would have been in 1993. I was  
22   assigned to the World Trade Center in New York City after the  
23   bombing there. I was one of the crime scene team leaders.  
24   That is, I directed a group of other investigators getting  
25   evidence there.

1       In 1995, I went to Oklahoma City. I was one of the team  
2 leaders at that bombing incident and collected quite a bit of  
3 the evidence there.

4       In 1996, there was an incident in Saudi Arabia known as  
5 the Khobar Towers incident. I was one of the crime scene team  
6 leaders there.

7       In 1998, I was the principal advisor at the bombing -- I  
8 should say principal forensic advisor -- at the bombing of the  
9 United States Embassy at Nairobi, Kenya, and then later I had  
10 the responsibility in the laboratory for all the examination  
11 of the evidence that came from that bombing.

12       I skipped one. In 1996, I was the team leader for the  
13 search at Theodore Kozinski's cabin. He's perhaps better  
14 known as the "Unabomber." I led the entry into his cabin and  
15 the recovery of the evidence from his cabin.

16       In 2000, I was the forensic advisor at the bombing of the  
17 United States Cole, USS Cole, which was a Navy ship that was  
18 bombed in Yemen.

19       Well, on 9/11 -- after 9/11, I was the forensic advisor  
20 for the crash of United Flight 93 in Somerset County,  
21 Pennsylvania. Subsequently, I became the coordinating  
22 forensic examiner for all of the 9/11 evidence that was  
23 collected and submitted to the laboratory for examination.

24       I am probably missing some, but those are the ones that  
25 kind of come to mind.

1 Q. Are you a member of any organizations -- professional  
2 organizations? Have you provided any training? Have you  
3 published anything yourself?

4 A. I am currently a member of the International Association  
5 of Bomb Technicians and Investigators. I have published a  
6 couple of articles, one of them on disaster management, in a  
7 United Kingdom publication, and I wrote an article on forensic  
8 examination of bombing cases for the United States Attorneys  
9 Bulletin.

10 Training -- in my 17 years or so of doing this, I have  
11 probably done maybe 100 training classes where I have taught  
12 all the aspects of bombing scene collection, explosives  
13 effects, construction of improvised explosive devices, or  
14 IED's as we kind of call them in our business, so that would  
15 be somewhat related to that.

16 Q. Have you ever testified as an expert in court?

17 A. Yes, sir, I have. I have testified in this courthouse  
18 here, and others.

19 MR. BARTLETT: I would like to offer Mr. Sachtleben  
20 as an expert, as a bomb technician expert.

21 MR. FOX: Your Honor, we would object. The  
22 Government hasn't established his background sufficiently.

23 THE COURT: In what particular way are you talking  
24 about?

25 MR. FOX: We don't believe the Government set the

1 proper foundation to offer him as an expert.

2 THE COURT: It is noted. He may testify.

3 BY MR. BARTLETT:

4 Q. Mr. Sachtleben, before getting to your analysis of the  
5 various items that were recovered from the University of  
6 Washington, I want to talk about an incident that you were  
7 involved in at FBI headquarters in March of 2001 involving a  
8 parking pass.

9 A. Yes.

10 Q. Were you disciplined by the Federal Bureau of  
11 Investigation?

12 A. I was, yes.

13 Q. Why don't you explain the circumstances to the jury.

14 A. Sure. To get into FBI headquarters as an employee, you  
15 need to have a parking pass. Myself and two other colleagues  
16 had a pass but unfortunately we found that our travel -- we  
17 kept -- whoever had the pass always seemed to be somewhere  
18 else in the world, and we were having trouble getting in, so  
19 we made a decision, which was in contravention to policy, to  
20 photocopy the pass. So we were caught and we were each given  
21 a disciplinary action. I was given three days off without pay  
22 for having made that copy of the pass, as well as not being  
23 completely honest with the employee who found that I had made  
24 this copy of the pass.

25 Q. Let's talk about your role in analyzing evidence recovered



1 from the May 21, 2001 arson at the Center for Urban  
2 Horticulture here at the University of Washington.

3 Were you involved in that?

4 **A.** Yes, I was. On May 25, 2001, I was assigned to be the  
5 coordinating examiner for all the forensic evidence in this  
6 case. Within the laboratory, the coordinating examiner is  
7 basically the examiner who is going to shepherd that evidence  
8 through the laboratory, make sure it gets to all the right  
9 other disciplines within the laboratory and ultimately get it  
10 back out to the agency that submitted it to us.

11 **Q.** How is the lab set up? Physically, what really happens?  
12 How does this all come to you? What do you do?

13 **A.** At that time, in 2001, the FBI laboratory was still housed  
14 within FBI headquarters in downtown Washington, which is just  
15 an office building. So within that building, we had separated  
16 out certain rooms where we could receive evidence.

17 So in this case, we had a large bay down in the lower  
18 level of the building, brought the boxes of evidence into that  
19 bay, set up folding tables, spread out paper so we could cover  
20 those tables, took an inventory of everything that we had  
21 received, made some notations about those items and generated  
22 a list of those items.

23 **Q.** After you do this, as part of your duties, do you actually  
24 assign other people to do the work? For example, Ron Kelly?

25 **A.** Yes. Well, I suppose it's a fine point here. I don't

1 actually assign Mr. Kelly; my boss does that, but I certainly  
2 work very closely with all the other examiners.

3 So on this occasion, Mr. Kelly was assigned as the  
4 forensic chemist. We got together that first weekend and sat  
5 down with it and made sure that he got the rights things; in  
6 other words, the items that would be the most useful to him in  
7 his chemical analysis.

8 Similarly, I worked with the latent fingerprint examiner,  
9 hairs and fibers, DNA, whoever else was involved in this case.  
10 I would sit down with that examiner, make sure they got the  
11 right things in their hands.

12 **Q.** Did you eventually conduct an examination yourself?

13 **A.** I did. Typically, my examination comes at the end. I  
14 obviously have to wait to see what the results are of the  
15 chemical analysis. My exams would be -- I have to wait to  
16 make sure that the latent fingerprint people handle things  
17 because I tend to take things apart.

18 One of my duties is to sort of cut through the layers, if  
19 you will, go down to the very core of the material and make  
20 sure we get an appreciation for everything that's there. If I  
21 were to do that at the beginning, I could mess something up  
22 for the latent people or the hair and fiber people.

23 **Q.** Did you do that in this case?

24 **A.** I did.

25 **Q.** Could you take a look at what's been already entered into

1 evidence -- and I hope it is right there beside you -- as  
2 330-A, the plastic bag?

3 **A.** Yes.

4 **Q.** First of all, do you recognize that?

5 **A.** I do. I see my initials on here from my examination, and  
6 I recognize this item.

7 **Q.** Can you explain to the jury -- it looks like there's a  
8 thousand plastic bags in there. What happened with regard to  
9 the evidence at the FBI, and why do we keep seeing all those  
10 bags?

11 **A.** Sure. Well, the first bag that it would reside in would  
12 be at the crime scene itself. So the investigators at the  
13 crime scene collect evidence, they package it up in some  
14 material, and they put various labels and markings and  
15 initials on it so that we can preserve what we call chain of  
16 custody, the legal term for just making sure we keep track of  
17 everything.

18 That's very important packaging, but at the laboratory it  
19 doesn't help us. Very often it's a metal can or something we  
20 can't see. So the first thing I do is go through and open all  
21 that packaging and get the material out to where now I can see  
22 it. But of course, I still have to preserve the integrity of  
23 the evidence; I have to keep the chain of custody.

24 So I am going to use my own packaging and put various  
25 notations, labels, my initials on here and, of course, we have

1 our own numbering system. Just to make things more confusing,  
2 perhaps, but when the evidence is collected at the crime  
3 scene, they number it in a certain way based on the order that  
4 they have collected it.

5 Well, when I get it in the laboratory, I have to put my  
6 own numbers on it because it's going to be put through all of  
7 our own processes, and often those two don't always line up.

8 Then when it comes here in court, this courtroom has its  
9 own numbering system, and so that's why we have yet another  
10 series of numbers and labels on it.

11 **Q.** Taking a look at what's inside Exhibit 330-A, can you  
12 explain what, if anything, you found that was relevant to your  
13 analysis as an FBI bomb technician?

14 **A.** Yes. If I can open this, I will do so.

15 THE WITNESS: May I stand up, sir?

16 THE COURT: You may.

17 **A.** Thank you. The largest item I found in here is kind of  
18 fused together and it's melted plastic. There's even some  
19 carpet that's all melted together.

20 When I examined this in the laboratory, I found on the  
21 underside of this piece where the material had not melted but  
22 was stuck to this carpet -- I saw some lettering and some  
23 notation, which I believe indicates this is a Rubbermaid  
24 plastic storage container.

25 Then kind of almost melted into this container is this

1 other plastic bag. I think in my notes I may have called it a  
2 bladder or something, but it's some sort of plastic bag. It's  
3 a little bit heavier than the plastic bags you might use in  
4 your trash container, and that's kind of melted right into  
5 this. So it would appear as if these two were once together.

6 Then in addition to that --

7 Q. Special Agent Sachtleben, as you are handling that, is  
8 there any odor relating to that?

9 A. Yeah. There's a pretty good smell of some kind of  
10 gasoline or some other kind of petroleum type product.

11 MR. BARTLETT: Your Honor, with the Court's  
12 permission, perhaps if he could briefly walk by the jury so  
13 they could see for themselves.

14 THE JURORS: We can smell it.

15 MR. BARTLETT: Nevermind.

16 THE COURT: I guess we don't need it.

17 BY MR. BARTLETT:

18 Q. What else did you find in that bag?

19 THE WITNESS: Sorry about the mess, Your Honor. I  
20 will keep it to a minimum here.

21 A. Kind of all fused together within this same object is a  
22 couple of items.

23 This is what appears to me to be a partially consumed road  
24 flare. You can see the kind of characteristic red color in  
25 here. It too has a little bit of that same odor. There's

1 some wire and some tape; quite a bit of scorching on the wire.  
2 The remaining items are more or less the same. We've got a  
3 lot of things that are just kind of fused together -- plastic  
4 cardboard and all those kind of things -- very indicative to  
5 me to things that have been subjected to a fairly intense  
6 heat.

7 BY MR. BARTLETT:

8 Q. If you could repackage those things and take a seat.

9 Did you take any photographs during the time -- when I say  
10 you, did you and your team take any photographs at the time  
11 you were analyzing them?

12 A. Yes. One of our standard procedures within the laboratory  
13 is that, to the extent we are able to, everything we receive,  
14 we photograph in the condition that we receive it. So in this  
15 case, I did photograph, or direct to be photographed, all  
16 these items.

17 Q. Would you take a look at Government's Exhibit 329-A, 329-B  
18 and 329-C and tell me if you can recognize them and what, if  
19 anything, they depict?

20 A. I do recognize these. These are photographs that were  
21 taken in the laboratory of this exhibit here, which has been  
22 marked as Government's Exhibit 330-A.

23 MR. BARTLETT: Offer Government Exhibits 329-A, B and  
24 C.

25 MR. FOX: No objection, Your Honor.

1 THE COURT: Admitted.

2 (Exhibit Nos. 329-A, 329-B and 329-C admitted.)

3 BY MR. BARTLETT:

4 Q. Taking a look first at Government's Exhibit 329-A, what is  
5 it we are looking at?

6 A. The image just clicked. I don't know if --

7 Q. Exhibit 329-A.

8 A. Okay, very good. 329-A is looking from the top down, so  
9 what you are seeing there in the center of the photograph is  
10 that plastic bag or bladder that I described, and then around  
11 the edges of the photograph are the -- and I will just point  
12 here -- that's the carpeting that was stuck to the bottom of  
13 the Rubbermaid container.

14 Q. 329-B?

15 A. 329-B is just flipped over. We've got the bottom of the  
16 Rubbermaid container there. It's a little hard to see in this  
17 photograph, but there are some raised letters that read  
18 Rubbermaid. Unfortunately in that photograph they are just  
19 not readily apparent.

20 Q. And 329-C?

21 A. 329-C is a photograph that shows some of the smaller items  
22 they held up. For example, that item there is the road flare.  
23 That's the road flare which was kind of folded a bit in there.  
24 That item that I have just indicated is the electrical wire  
25 that was wrapped throughout, and there's some tape that's just

1 at the end of that, black electrical tape.

2 Q. Were you able to actually see what type of Rubbermaid item  
3 it was?

4 A. Yes. I was able to read some lettering on the bottom that  
5 said Servin' Saver, and I believe it was also 33 cups.

6 Q. If you could look at what's been marked for illustrative  
7 purposes as Government's Exhibit 330-B, does the numbering on  
8 the bottom of that plastic container appear to match?

9 A. Yes. This is a very similar to the lettering and  
10 numbering that I saw on the exhibit that I examined.

11 MR. BARTLETT: I would like to offer 330-B just for  
12 illustrative purposes.

13 MR. FOX: For illustrative purposes, no objection.

14 THE COURT: Admitted.

15 (Exhibit No. 330-B admitted for illustrative purposes.)

16 BY MR. BARTLETT:

17 Q. In addition to the melted plastic material you just talked  
18 about, did you also examine Exhibit 333 which was your Item  
19 Q9, by your own numbers?

20 A. Yes. Once again, I recognize my initials.

21 Q. Can you take it apart and find what else you found?

22 A. In this instance, as I alluded to previously, it  
23 originally came to us in this metal can. Once I opened the  
24 metal can and went through the items inside there, I found  
25 several things of interest. Here we have got the charred



1 remains of one or possibly two matchbooks.

2       So these are the common, what we call the kitchen-type  
3 matches, cardboard matches; and so we have got a couple  
4 matchbooks here.

5       This item here which was taped to the matchbooks when we  
6 first received them in the laboratory, there's a couple pieces  
7 of -- they are tan-colored paper with some lighter-colored  
8 white like masking tape applied to them. I recognize these as  
9 an item that's known and is called a model rocket igniter.  
10 Now, if you as a hobbyist were interested in using model  
11 rocket, these are a little electrical device that you can use  
12 to remotely set the rocket off so you don't have to be  
13 standing right next to it when you ignite it and send it up in  
14 the air.

15       They come packaged, usually two together with this tape  
16 holding them together. So I recognize this as being  
17 consistent with the tape that's on a model rocket igniter.

18       Within this same exhibit, again, we've got some more  
19 pieces of black electrical tape. In fact, these were wrapped  
20 around the matchbooks to sort of hold this model rocket  
21 igniter paper within there.

22 **Q.** Did you take photographs with relation to your examination  
23 of Exhibit 333, Item Q9?

24 **A.** Yes.

25 **Q.** Do those photographs appear at 332-A and 332-B?

1   **A.** Yes, those are the photographs I had taken.

2           MR. BARTLETT: Offer.

3           MR. FOX: No objection.

4           THE COURT: Admitted.

5           (Exhibit Nos. 332-A and 332-B admitted.)

6 BY MR. BARTLETT:

7   **Q.** 332-A. What is it we are looking at?

8   **A.** If I could clear the screen.

9   **Q.** Lower left-hand corner.

10   **A.** There we go.

11       This photograph is a little dark, and the contrast isn't  
12 very good, but I will indicate with that arrow -- that object  
13 there is the matchbooks that I previously displayed. There,  
14 the matchbooks are still kind of taped or fused together with  
15 that partially-melted black electrical tape.

16   **Q.** And 332-B?

17   **A.** 332-B is a photograph that I had taken that shows on the  
18 left-hand side -- there you can see those two pieces of paper  
19 that have the lighter-colored masking tape on them.

20       There on the right-hand side is a single model rocket  
21 igniter. What you are looking at there is two pieces of very  
22 thin wire and at the tip, where those two pieces of wire come  
23 together, there's a very small amount of flammable material.  
24 It's the same thing you'd find on the head of a match.

25       Now, the white tape and tan-colored paper that is in the

1 center here holds those two pieces of wire together so that  
2 they don't cross over with one another and create a short  
3 circuit.

4 If you were to apply power, say with a battery -- say with  
5 like a 9-volt battery -- to that, those two very thin wires  
6 would heat up; heat up almost like you'd look inside your  
7 toaster and you see the elements inside your toaster heat up;  
8 so those wires would heat up and could cause that little tip,  
9 that little match tip, to flash out and throw out a flame.

10 Now, if you were a model rocket hobbyist, you would use  
11 that in the rocket itself, and that little bit of flame would  
12 be enough to ignite the engine and shoot the rocket up in the  
13 air.

14 Now, in this case, we found these two items on the left  
15 had been taped together inside those matchbooks, which led me  
16 to conclude that they were there to help ignite the matchbooks  
17 themselves.

18 **Q.** Just to clarify for the members of the jury, although I  
19 don't think there's any confusion, the item we are looking at  
20 on the right is something that you had there for illustrative  
21 purposes; that isn't something that you actually found?

22 **A.** Right. Thank you. You may notice on the photograph, we  
23 have labels on all of our photographs. On the left-hand side,  
24 you will see a label that has a bunch of letters and numbers  
25 and so forth which indicates that we applied those in the

1 laboratory, and on the right-hand side it simply says "known  
2 standard."

3 One of the things we do in the laboratory is just to keep  
4 cupboards full of batteries and clocks and timers and model  
5 rocket igniters so we can compare them side by side like this.

6 Q. Thank you. You can repackage that, and then if you could  
7 pick up what's already been entered into evidence as  
8 Government Exhibit 336, which I believe is Item Q10, your lab  
9 number.

10 A. Once again, I recognize 336. I see my initials on the  
11 imaging here. You can see the metal can that it initially  
12 came to us in.

13 A couple of items that got our attention during our  
14 examination -- first off, we found a 9-volt battery. Now, a  
15 9-volt battery -- typically we'd see it and in fact we saw it  
16 in the laboratory; it was intact. It was a rectangular  
17 object. You could see the outer casing. Like I mentioned  
18 earlier, one of the things that I do is I take things apart  
19 because I like to see anything, any notations, any markings on  
20 them.

21 So in this case, I have taken this 9-volt battery apart,  
22 and people may or may not realize it, but inside a 9-volt  
23 battery are these six cylinders or cells, as they are called,  
24 and each one of these cylinders or cells has one-and-a-half  
25 volts of power. When we add six times one-and-a-half

1 together, you get 9 volts. So that's what we had in this  
2 case.

3 Unfortunately, though, the reason I took it apart is  
4 sometimes we will find markings or lettering inside the casing  
5 that would tell us what brand it was. This object was so  
6 charred that we never really found anything in there that  
7 helped us identify it.

8 There's several pieces of wire that were inside here, the  
9 fragment of what I believe is a circuit board. So we can see  
10 the little electrical components that are connected to this  
11 board. It's the right size and the right shape for the type  
12 of circuit board that I have seen previously used in small  
13 digital clocks or timers; kind of like a digital kitchen timer  
14 that you may have in your kitchen. It's about the right size  
15 for that.

16 One other thing that I found that certainly got my  
17 attention was -- it was actually found in two pieces -- and  
18 this object right here, when I hold it together like this,  
19 this is consistent with an electrical component that's called  
20 a silicon controlled rectifier, or SCR for short.

21 An SCR is really just a switch. It's got -- normally, it  
22 would have three prongs coming out the bottom, and we could  
23 use this within an electrical circuit to take power from a  
24 smaller object, like a timer, and run it through this switch  
25 and trigger a larger source of power like a 9-volt battery.

1       So the presence of these three things here were very  
2 interesting to me in trying to reconstruct what happened here,  
3 what might have caused this gasoline and this road flare and  
4 all these other matchbooks that were in here -- how did they  
5 actually come to function.

6 **Q.** Did you take a photo of these items also, and does that  
7 photo appear in Exhibit 335?

8 **A.** Yes.

9               MR. BARTLETT: Offer 335.

10              MR. FOX: No objection.

11              THE COURT: Admitted.

12                               (Exhibit No. 335 admitted.)

13 **A.** Exhibit 335 is the photograph that I had taken in the lab.  
14 A couple things here. In the lower right-hand corner is this  
15 circuit board. Immediately above that is the 9-volt battery.  
16 You can see that that's the condition that we received it in.

17       I will start over again. In the lower right-hand corner  
18 is the fragment here, the circuit board. Above that is the  
19 9-volt battery, but you can see that's the condition it was in  
20 prior to our disassembling it in the laboratory. Then just  
21 over to the left of that -- it's a little bit hard to see, but  
22 this is the SCR that I talked about earlier.

23       One of the things that you might be able to notice in that  
24 photograph, if you look up from the arrow that I have  
25 indicated on the photo, you will see almost like a little bit

1 of a curly line. That's this piece of wire. Someone has  
2 soldered a piece of wire onto one of the legs of this  
3 component. That got my attention because that's not how these  
4 are normally used.

5 Normally, these items are mounted in a circuit board, but  
6 to take one out like that and to actually solder a wire, which  
7 is not an easy thing to do, once again, it drew my attention  
8 in trying to sort out how this whole circuit might have  
9 worked.

10 BY MR. BARTLETT:

11 Q. Thank you. If you could repackage that and then grab,  
12 finally, Exhibit 339 that's already been entered into  
13 evidence, which I believe is Item Q12 of your evidence.

14 Do you recognize that?

15 A. Yes, I do.

16 Q. Once again, how do you recognize it?

17 A. I recognize it by the markings and my initials that I  
18 placed on this bag.

19 Q. Could you open that up and explain what's in it that you  
20 found?

21 A. Here's the original can that this was received in. A  
22 couple things with Exhibit 339.

23 First off, once again, we had another casing -- it was  
24 intact at the time we received it -- for a 9-volt battery, and  
25 we've got the cells here, again.

1       Then this is a little button battery. This is the type of  
2 battery that you'd see typically in, let's say, your watch or,  
3 in this case, it's the type and size battery that I have seen  
4 before used in a small digital timer or clock.

5       Speaking of which, we've got a couple pieces of glass or  
6 plastic here, and these are what I recognize to be consistent  
7 with the faceplate of a timer. When you look at it -- if you  
8 are familiar with a kitchen timer and you look at the  
9 faceplate, it's got readouts for numbers. I think the  
10 photograph may show this better, but I can see on this -- I  
11 can see the imprint that is typically seen for the readout of  
12 those numbers.

13 **Q.** Did you take a photograph of this also that appears in  
14 Exhibit 338?

15 **A.** Yes, I did.

16               BY MR. BARTLETT: Offer 338.

17               MR. FOX: No objection.

18               THE COURT: Admitted.

19                       (Exhibit No. 338 admitted.)

20 **A.** Starting in the lower right again, there's three objects  
21 there clustered together. That's these three pieces here. If  
22 you look right there where I have just put that arrow, that's  
23 the outline or imprint. It's kind of like if you have a clock  
24 or a timer and you look at it and the power is out, you might  
25 still actually see the outline; it looks like a bunch of 8s on



1 it; that's just simply the digital readout, so there you can  
2 just make out one or two of the digits.

3 Above that is the intact item that I looked at in the lab,  
4 which turned out to be this 9-volt battery, and that I have  
5 just indicated with an arrow is this small, what I would call  
6 a button battery.

7 Q. Go ahead. You can go ahead and repackage that.

8 Special Agent Sachtleben, after analyzing the exhibits  
9 that we've gone through, Exhibits 333, 336, 339, the items  
10 that Special Agent Jane Stephan described as recovering from  
11 just inside the door at Toby Bradshaw's office, did you reach  
12 a conclusion as to what these items, put together, comprised?

13 MR. FOX: I would object again. It's a question for  
14 the jury.

15 THE COURT: It is noted. You may answer, sir.

16 A. Yes, I did reach a conclusion.

17 BY MR. BARTLETT:

18 Q. What was that conclusion?

19 A. The conclusion was that these items, taken together,  
20 constituted the components of an improvised incendiary device,  
21 which would be also known as a fire bomb.

22 Q. Why did you reach that conclusion?

23 A. Well, several things. First off, in my experience, in  
24 having looked at items like this before, both in my field  
25 experience and my forensic training at the lab, in order to

1 have a fire bomb, you've got to have an accelerant; something  
2 that will catch fire.

3 In this case, I had the report from Mr. Kelly that said he  
4 found gasoline -- of course, I could smell it as well, but it  
5 was good to know what it was that he had found. Then you have  
6 to have something to make that gasoline catch on fire.  
7 Obviously, it doesn't just burn all on its own.

8 So in this case, I found a road flare. I found  
9 matchbooks. I found a model rocket igniter. So once again,  
10 all those items, when you put those together, you've got the  
11 ability there to start a fire. But to have an improvised  
12 incendiary device, to have a fire bomb, typically in my  
13 experience, you don't want to be standing right there when it  
14 ignites. You want to be somewhere else when it starts  
15 burning.

16 So in this case, what I found was all the components to  
17 put together a timed delay circuit so that you could set some  
18 period of time, walk away from that scene, and when the time  
19 expired, if everything was connected properly, you could start  
20 the fire.

21 **Q.** Prior to coming to testify today, did I ask you to create  
22 your own mock-up that would explain how this timing device  
23 worked?

24 **A.** Yes, you did.

25 **Q.** Did you?

1   **A.**   Yes, I did.

2   **Q.**   Is that Exhibit 982?

3   **A.**   Yes, sir, it is.

4               MR. BARTLETT: Your Honor, if we could use this just  
5 for illustrative purposes and have Special Agent Sachtleben  
6 explain how this is set up.

7               THE COURT: What exhibit is that?

8               MR. BARTLETT: 982. It's over by the chair. It's an  
9 actual physical item.

10              THE COURT: All right.

11              MR. FOX: Your Honor, I have not had the opportunity  
12 to look at that.

13              THE COURT: Why don't we do this. Let's take the  
14 noon recess and give you a chance to look at it, and we will  
15 take this up after the break. Of course, you will have your  
16 noon hour, have your lunch. As you go about your business,  
17 don't discuss the case or anything else.

18              When you are back in the building, I would like to have  
19 you in the jury room. Keep your books on the chair, and see  
20 you around the 1:00 hour.

21              (Jury not present.)

22              THE COURT: All right. You may be seated. We will  
23 be in recess, and I will have you take care of that.

24              THE CLERK: All rise. Court is in recess.

25              (Luncheon recess. )

1 (Jury not present.)

2 THE COURT: Let me say one thing before I bring out  
3 the jury.

4 It has come to my attention that some witnesses may be  
5 called on to testify, and I made the ruling as to excluding  
6 the witnesses. It's up to you to keep your witnesses out;  
7 advise them not to come in until they are called to testify.  
8 The same for the defense.

9 If that should happen, I will rule on it. You know who  
10 your witnesses are going to be, okay.

11 MR. BLOOM: I would like to tell you what the  
12 situation is.

13 THE COURT: I don't need to know anything more about  
14 that now. If you have a potential witness in the room, they  
15 have to leave, and then I will take it up at a different time,  
16 but right now we are going to the jury.

17 MR. BLOOM: This is a person that I had no idea was  
18 going to be in the courtroom.

19 THE COURT: That may be, but if you intend to call  
20 somebody, and they are in the room now, tell them to leave.

21 MR. BLOOM: I will. I also want to subpoena her at  
22 this time.

23 THE COURT: Well, do what you have to do on that.  
24 Bring in the jury, and I will take up the issue as to whether  
25 these folks testify, and to what extent, at some other time.

1 MR. FRIEDMAN: Your Honor, we do have the motion in  
2 limine, and it can be dealt with at the break.

3 THE COURT: I will take those matters up at the  
4 appropriate time, as I have indicated.

5 Bring in the jury. I believe we had Mr. Sachtleben on the  
6 stand.

7 (Jury present.)

8 THE COURT: All right. You may be seated.

9 MR. BARTLETT: May I continue, Your Honor?

10 THE COURT: Yes.

11 BY MR. BARTLETT:

12 Q. Special Agent Sachtleben, just prior to the break for  
13 lunch, we were talking about Government's Exhibit 982. I  
14 believe that was a mock-up that you built pursuant to a  
15 request I made for you?

16 A. Yes, sir.

17 MR. BARTLETT: I would like to offer Government's  
18 Exhibit 982 for illustrative purposes.

19 MR. FOX: For illustrative purposes, no objection.

20 THE COURT: All right. Admitted.

21 (Exhibit No. 982 admitted.)

22 BY MR. BARTLETT:

23 Q. Could you perhaps hold that up and explain to the members  
24 of the jury what you built?

25 A. What I put together here was a combination of the various

1 objects and components, both what I saw in the evidence that I  
2 reviewed, as well as in my training and background in this  
3 type of device that I have seen before.

4 Now, obviously, I have built this in such a manner as to  
5 make it more display friendly so I put it on a clear piece of  
6 plastic and put everything out. Ordinarily, in my experience,  
7 you wouldn't see anything laid out quite as neatly as this;  
8 they tend to be clustered together.

9 The items that you see -- I will begin with this up here.  
10 This is a road flare. I have taped to it several matchbooks  
11 and several of these model rocket igniters that I spoke about  
12 previously, but I have not connected them to the circuit for  
13 the obvious reason that I did not want to start a fire today  
14 in the courtroom.

15 In their place, I put a red light. Leading off from that  
16 light, we have got several lengths of wire. Here I have glued  
17 to the board that silicone controlled rectifier, or SCR, that  
18 I talked about earlier. This item is connected in several  
19 ways. On the one side of the circuit, we have got a digital  
20 countdown timer. On the other side of the circuit is a 9-volt  
21 battery and an on/off switch.

22 The way that this will function is that I have already set  
23 a short period of time on the timer, and when I press the  
24 start button, I will throw this safety switch over. The  
25 reason I put the safety switch in is to allow everything to

1 happen right up to the point where you start the time running.

2       Once I throw the safety switch, then time will count down  
3 on the timer, and when it reaches it -- and I disconnected the  
4 beeper or buzzer that's in there, and instead connected it to  
5 this SCR. The time counts down and current will flow through  
6 the SCR and trip that electronic switch in there and allow the  
7 current to flow from the battery.

8       So at this time, I have got it set for four seconds. I  
9 will press the start button. I will move the switch into the  
10 on position, and at the conclusion of the four seconds, the  
11 red light has come on indicating that current is now flowing  
12 from the 9-volt battery into this red LED here.

13 **Q.** Thank you, Special Agent Sachtleben.

14       I want to turn your attention to a second group of items  
15 that have been physically introduced into evidence that  
16 Special Agent Stephan described as recovering from a different  
17 area of Toby Bradshaw's office on May 22nd.

18       First, if you could look at Exhibit No. 342, which I  
19 believe is a paper sack behind you, and it was your Q49.

20 **A.** Yes, sir.

21 **Q.** Do you recognize that?

22 **A.** Yes. Once again, I see my markings and initials on this.

23 **Q.** Could you take it out and explain to the jury what it is  
24 you found in there?

25 **A.** Here we have the original packaging container, and in this

1 instance, I have not separated it into a separate bag, so I am  
2 going to use a tool that I often use in the laboratory, which  
3 is a quarter, to open the can and take out some of the  
4 contents that are in here.

5 Several items in here came to my attention when I was  
6 examining this in the laboratory. For example, here's a  
7 circuit board. This circuit board is in a little better  
8 condition than the one that was in the previous exhibit. Once  
9 again, this circuit board is consistent with the boards that I  
10 have seen inside digital timers, such as the one that was just  
11 displayed.

12 The second item here, we've got several lengths of wire.  
13 Most of it has had the outer plastic insulation melted off of  
14 it. Here we've got a cardboard object, which I believe is  
15 consistent with the outer paper from a road flare.

16 I believe that's it for this.

17 **Q.** Go ahead and repackage it.

18 **A.** (Compl ying.)

19 **Q.** If you could also pull up and take a look at the large  
20 plastic bag behind you, which is Exhibit 345; I believe your  
21 Item Q60.

22 **A.** Yes.

23 **Q.** Do you recognize that?

24 **A.** Yes, I see my initials on it and the other laboratory  
25 markings.



1 Q. If you can take that out and explain what, if anything of  
2 relevance, you found when you examined that at the lab.

3 A. This item has several parts. First off is a plastic  
4 container here, and it bears some imprinted writing on the  
5 bottom: Rubbermaid, Servin' Saver, 33 cups. So this is  
6 consistent with the Rubbermaid container that was in the  
7 previous exhibit. We, again, have a plastic bag or bladder  
8 inner liner that would appear to have been fitted inside this  
9 container here.

10 Then I separated several items out from this in the  
11 laboratory. In this case, there are at least one, perhaps  
12 more -- well, let's say at least two matchbooks. This item --  
13 these items I am holding in my hand were originally taped  
14 together with some black plastic electrical tape.

15 Sandwiched in the midst of these matchbooks, once again,  
16 we've got one of those pieces of tan paper with the masking  
17 tape on it which, I believe, is consistent with the model  
18 rocket igniter holder. Here's another portion of that same  
19 model rocket paper.

20 Here -- this is perhaps a little easier to see than the  
21 last item that I was looking at here. We've got the red paper  
22 that's characteristic of the outer wrapping for a common road  
23 flare. That's about it for that item.

24 Q. If you can take a second and repackage that.

25 Looking at the bladder, before you put that back, the top

1 plastic, do you notice anything on that?

2 **A.** There's quite a bit of charring, melting. I am not sure  
3 if there's something you wanted particular attention to.

4 **Q.** Thank you. If you can -- go ahead, I am sorry. I keep  
5 interrupting you.

6 If you can look at the three photos marked 344-A, B, C and  
7 D, four photos, and tell me if you recognize those.

8 **A.** Yes, I recognize these as photos taken in the laboratory.

9 MR. BARTLETT: Offer.

10 MR. FOX: No objection.

11 THE COURT: Admitted.

12 (Exhibit Nos. 344-A, 344-B and 344-C admitted.)

13 BY MR. BARTLETT:

14 **Q.** Taking them one at a time, looking first at Government's  
15 Exhibit 344-A, what is that?

16 **A.** 344-A is a photograph of the plastic container and the  
17 plastic bag or bladder. It looks to me like we are looking at  
18 it from the top down, which would be the bladder side of it.

19 **Q.** 344-B?

20 **A.** 344-B is the reverse of that, the bottom of the plastic  
21 Rubbermaid container.

22 **Q.** The loose material that you see in the upper right portion  
23 of that photo that seems to be attached -- what is it that we  
24 are looking at?

25 **A.** Where I have indicated with an arrow, is that the

1 location?

2 Q. Yes.

3 A. That looks like it's some of the carpeting that was fused  
4 to the container, and it appears to have been cut out when it  
5 was collected at the crime scene.

6 Q. And 344-C?

7 A. 344-C shows the matchbooks that I held up a few minutes  
8 ago. In the upper left corner is the matchbook that had the  
9 model rocket igniter paper still affixed to it.

10 Then below that is -- as we peeled the tape away in the  
11 laboratory and started to unwrap the layers, that piece came  
12 off and we could see it looked like another piece of that  
13 model rocket igniter paper.

14 Once again, on the right-hand side, I selected from our  
15 library, if you will, the known standard of a model rocket  
16 igniter to display those side by side.

17 Q. Finally, if you could turn around and take a look at  
18 what's been marked and admitted into evidence as Government's  
19 Exhibit 348, which I believe is your Q65.

20 A. Once again, I recognize my laboratory markings on this.

21 Q. If you could open it up and explain what, if anything, of  
22 relevance you found inside of that.

23 A. Here we have the original metal can that it was collected  
24 in. There are a couple of items that were contained in this  
25 exhibit. One is, we've, again, got a fragment of one of the

1 common matchbooks, cardboard matchbook.

2 Here we've got a piece of -- it's a little hard to see,  
3 but it's a red-colored paper which is consistent with the  
4 outer wrapping on a road flare.

5 Finally, this item right here. And here again, we have an  
6 example of the silicone controlled rectifier, the SCR, that  
7 electronic switch. In this case, unlike the previous exhibit  
8 that we discussed, here it is intact, as opposed to being in  
9 several parts.

10 Q. Looking at what has not been admitted, Exhibit 347, a  
11 photo that you have in front of you; do you recognize that?

12 A. Sir, I am not sure I am seeing -- 347?

13 Q. Correct.

14 A. That is not up here.

15 MR. BARTLETT: Sorry, Your Honor.

16 A. Yes, I recognize this photograph.

17 BY MR. BARTLETT:

18 Q. What is that?

19 A. This is a photograph I had taken in the laboratory.

20 MR. BARTLETT: Offer 347.

21 MR. FOX: No objection.

22 THE COURT: Admitted.

23 (Exhibit No. 347 admitted.)

24 BY MR. BARTLETT:

25 Q. Taking a look at that, explain what it is we are looking

1 at.

2 **A.** Yes, sir. In this corner, where I have indicated with an  
3 arrow, that is the SCR. To the left of that object is the  
4 matchbook. Up here in the upper left-hand corner is the  
5 fragment of the road flare outer wrapping.

6 **Q.** Thank you. I will give you a second to reload all that  
7 stuff.

8 Special Agent Sachtleben, based on your training and  
9 experience, after analyzing the items that you've looked at,  
10 Exhibit 342, Exhibit 345, Exhibit 348, did you reach a  
11 conclusion as to what, if anything, those various items  
12 comprised?

13 MR. FOX: I would object on the basis that this is  
14 the ultimate conclusion testimony for the jury to decide.

15 THE COURT: It is noted. He may answer.

16 **A.** Yes, I did.

17 BY MR. BARTLETT:

18 **Q.** What was that conclusion?

19 **A.** It was my conclusion that these items constituted a second  
20 improvised incendiary device or fire bomb that was collected  
21 from the office on the evening of the fire.

22 **Q.** Once again, what is your reason behind that conclusion?

23 **A.** Well, several. First of all, in concluding that it  
24 constitutes an IID and provides an incendiary device, a fire  
25 bomb, is that I found all the components that I discussed

1 earlier. Mr. Kelly found the presence of gasoline on those  
2 items. I saw the Rubbermaid container. There was a road  
3 flare present, matchbooks, the model rocket igniter, the  
4 silicone controlled rectifier, the SCR switch. We've got the  
5 fragment of the timer as well.

6 Now, in these specimens, there was not a 9-volt battery  
7 contained in these, but you may recall in the previous  
8 specimens that we looked at, there were two 9-volt batteries.  
9 It is my experience that in crime scenes like this, objects  
10 are often moved around and can wind up a few feet away from  
11 their original location.

12 So I found that the total of these specimens and the  
13 previous specimens would be consistent with at least two fire  
14 bombs.

15 MR. BARTLETT: Thank you. No further questions.

16 CROSS-EXAMINATION

17 BY MR. FOX:

18 Q. Good afternoon, Agent Sachtleben.

19 A. Hello.

20 Q. Earlier this morning, Mr. Bartlett asked you -- do you  
21 want to wipe your hands off --

22 A. I am fine, sir.

23 Q. Mr. Bartlett asked you about the parking permit issue?

24 A. Yes, sir.

25 Q. It's correct that you were disciplined by your own agency

1 over that incident?

2 **A.** Yes, sir.

3 **Q.** You actually appealed that decision, didn't you?

4 **A.** I did.

5 **Q.** And you lost?

6 **A.** Yes.

7 **Q.** But earlier, when you were describing that incident, you  
8 said that you tried -- you had a duplicate parking pass or  
9 something like that?

10 **A.** Yes.

11 **Q.** And that you were not completely honest with one of the  
12 employees of the Federal Bureau of Investigation, right?

13 **A.** That's right.

14 **Q.** It's true, Agent Sachtleben, that you lied to that  
15 employee of the Federal Bureau of Investigation?

16 **A.** I wouldn't characterize it in that way; no, sir.

17 **Q.** Well, you wouldn't characterize it as a lie, but you told  
18 her something that wasn't true; you told her this parking  
19 permit had been lost?

20 **A.** That was my -- at the time I made that statement, that was  
21 my honest belief, sir.

22 **Q.** It was your honest belief, and you told that to your  
23 supervisors at the Federal Bureau of Investigation who were  
24 investigating this?

25 **A.** Yes.

1 Q. But they didn't believe you had made an honest mistake,  
2 did they? But you were disciplined, right?

3 A. Yes, sir -- well, the discipline was -- I violated the  
4 rules.

5 Q. Well, it was also for not being -- for misrepresenting  
6 what happened, to the employee of the Federal Bureau of  
7 Investigation; isn't that true?

8 A. That's right.

9 Q. By trying to cover for your wrongful duplication of the  
10 parking pass, you discredited yourself in front of two FMU  
11 employees; isn't that true?

12 A. That's what the report says; yes, sir.

13 Q. So it wasn't that you weren't being completely honest, you  
14 tried to cover up for your own misdeed; isn't that right?

15 A. I obviously didn't provide as much information as I could  
16 have.

17 Q. Obviously not.

18 Let's talk about your qualifications, and I will refer you  
19 to what's been marked for identification as A-143, which you  
20 should have in front of you.

21 A. Yes.

22 Q. Now, when you testified earlier, Mr. Bartlett asked you  
23 what your educational background was; isn't that true?

24 A. That's right.

25 Q. You told him that you had a Bachelor's degree from



1 Northwestern University, right?

2 A. Yes, sir.

3 Q. You didn't say that your degree was in history, did you?

4 A. No, but it was.

5 Q. It was in history?

6 A. Yes.

7 Q. You don't have a scientific background at all?

8 A. I do not.

9 Q. Then you have a law degree from DePaul University?

10 A. Yes.

11 Q. You've never practiced law, right?

12 A. No, sir.

13 Q. You went directly into the FBI?

14 A. Yes.

15 Q. You spent your entire professional career with the FBI,  
16 right?

17 A. Yes.

18 Q. You've never worked outside that agency?

19 A. Well, I certainly have worked outside the agency, sir.

20 Q. Well, you've never been employed by anyone other than the  
21 Federal Bureau of Investigation since you left law school in  
22 1983?

23 A. That's right.

24 Q. Since you left law school, you've never received any  
25 formal academic training in any of the sciences; isn't that

1 true?

2 **A.** No, that's not correct, sir. If you look at my CV, I  
3 think you'll see several of the courses that I took.

4 **Q.** Well, let's take a look at those courses.

5 In September 1986, you went to the post-blast  
6 investigators course put on by the FBI?

7 **A.** Yes, sir.

8 **Q.** That was a one-week course?

9 **A.** Yes, sir.

10 **Q.** In November 1990, you took a four-week course in  
11 Huntsville, Alabama -- hazardous devices school, right?

12 **A.** That's right.

13 **Q.** In 1997, you took a two-week course at a Naval school on  
14 explosive ordnance disposal, right?

15 **A.** It's actually a demolitions course which is -- we covered  
16 all military explosives, their uses and applications.

17 **Q.** Then you also took a course -- a one-week course in the  
18 chemistry of pyrotechnics and explosives, right?

19 **A.** Yes, sir, and that was a scientific course on the  
20 chemistry of both the construction of explosives and  
21 pyrotechnics, which is fireworks, as well as incendiary  
22 material.

23 **Q.** That was a one-week course, right?

24 **A.** Yes.

25 **Q.** Then 1998, you went to England for two weeks for a course

1 on bombing crime scene management, right?

2 A. That's right.

3 Q. And then in 1999, you went to Australia for two weeks for  
4 a bomb scene analysis and management course?

5 A. That's right, sir.

6 Q. So am I not correct that you have a total of 12 weeks of  
7 training for bomb investigations?

8 A. Well, I don't know if I'd characterize it in that way,  
9 sir. In the course of my 24 years as a Special Agent and 17  
10 years as a bomb technician --

11 Q. I am asking about your training.

12 MR. BARTLETT: Objection, Your Honor.

13 THE COURT: Let him answer the question.

14 A. I will say I have both. As I stated earlier, I have taken  
15 formal courses; that's where I have sat in the classroom and  
16 studied material. I have read dozens of scholarly treatises,  
17 textbooks and so forth on the subject of explosives and bomb  
18 construction. I have worked under other senior bomb and  
19 explosives examiners during the course of my 10 years in the  
20 laboratory. So you are absolutely right, though, in saying  
21 that that would be 12 weeks of formal classroom-type  
22 education.

23 BY MR. FOX:

24 Q. Now, when you've had some of your training, some of the  
25 people that have trained you over time have included Tom

1 Thurman?

2 **A.** He was at one time my boss, yes.

3 **Q.** Richard Hahn?

4 **A.** Yeah, I have worked with Mr. Hahn.

5 **Q.** David Williams?

6 **A.** David Williams -- yes, I worked with him.

7 **Q.** Roger Marks?

8 **A.** Roger Marks was the head of our chemistry unit, so he was  
9 not my direct supervisor, but I certainly know him.

10 **Q.** When you talked about being an apprentice to more senior  
11 figures in the FBI lab, those were the type of people that  
12 were your mentors, right?

13 **A.** Some of them. I entered into the explosives unit in June  
14 of 1996, and the people you've just listed -- at that time  
15 Mr. Williams and Mr. Thurman were in the unit, and they left  
16 the unit in early 1997.

17 **Q.** Okay. Michael Malone; you worked with him?

18 **A.** I don't know Mr. Malone.

19 **Q.** Wallace Higgins?

20 **A.** I do know Mr. Higgins.

21 **Q.** One of your colleagues?

22 **A.** Yes.

23 **Q.** Now, you testified also about some of the rather high  
24 profile cases that you've worked on, right?

25 **A.** Yes.

1 Q. The Oklahoma City bombing case at the Federal Building?

2 A. Yes.

3 Q. The African Embassy bombing case?

4 A. Yes.

5 Q. The American Embassy in --

6 A. I was in Nairobi, Kenya.

7 Q. The Unabomber case?

8 A. Yes.

9 Q. That's Ted Koziński?

10 A. Yes.

11 Q. And the first World Trade Center case in 1993, right?

12 A. Yes, sir.

13 Q. But you didn't work as a forensic scientist in any of  
14 those cases; isn't that true?

15 A. I was the coordinating forensic examiner for the bombing  
16 of the United States Embassy in Nairobi, Kenya, and I later  
17 testified as an expert witness on the forensics in that case.

18 Q. Actually, your primary job was to gather evidence in those  
19 cases; isn't that true?

20 A. No, sir --

21 MR. BARTLETT: Objection, Your Honor. Let him answer  
22 the question.

23 THE COURT: Let me handle this, okay. Let's not get  
24 excited. Question.

25 BY MR. FOX:

1 Q. Let's talk about the Unabomber case.

2 A. Yes.

3 Q. Your job was to search Ted Kozi nski 's hut?

4 A. Yes, si r.

5 Q. And you prepared the search warrant -- after you went into  
6 the hut you prepared the search warrant?

7 A. No, si r; that's i ncorrect. I was affiant; that i s the  
8 person who signed the arrest warrant affi davi t.

9 Q. Okay. But you searched hi s hut?

10 A. I di d.

11 Q. You weren't a forensic scientist i n that case?

12 A. No, si r.

13 Q. And the Okl ahoma Ci ty bombing case, you were assigned to  
14 search a parking l ot and collect evidence; i sn't that true?

15 A. That's right.

16 Q. You weren't the forensic examiner of that evidence; i s  
17 that true?

18 A. That's correct.

19 Q. At the World Trade Center case i n 1993, you were a team  
20 l eader and you supervised other agents who swept the debri s  
21 from the ground, ri ght?

22 A. That's correct.

23 Q. I n all of those cases, the World Trade Center case, the  
24 Okl ahoma bombi ng case -- those two cases, that's where you  
25 worked wi th Davi d Wi lli ams, for i nstance, ri ght?

1 A. Yes, si r.

2 Q. Ri chard Thomas Thurman?

3 A. Yes.

4 Q. I be lie ve you sai d Mi chael Ma lone -- you di dn' t know  
5 Mr. Ma lone?

6 A. To be honest, I have never met Mr. Ma lone.

7 Q. Wal lace Hi ggi ns?

8 A. Yes.

9 Q. Now, isn't it correct that your agency -- your unit and  
10 your unit's performance in those two cases, the Okl ahoma Ci ty  
11 bombing and the first World Trade Center bombing case, was  
12 criticized by the Office of Inspector General , Department of  
13 Justice, for its performance in those cases?

14 A. That's right.

15 Q. In fact -- well, tell the jury what the Office of  
16 Inspector General is.

17 A. Wi thi n the Department of Justice, the Inspector General  
18 would look into any allegations of misconduct with all the  
19 various agencies that are part of the Department of Justice,  
20 which the FBI is one of them.

21 Q. Then they would issue an independent report, like an audit  
22 of the unit's performance?

23 A. That's fair to say, yes.

24 Q. And actually, when you mentioned that some of these  
25 individuals left your unit in 1996 -- was it?

1 A. '97.

2 Q. They left because the Office of Inspector General  
3 criticized their performance in those very cases?

4 A. That's right.

5 Q. And they criticized the fact that that unit had people  
6 testifying outside their areas of expertise?

7 A. That was one of the allegations, yes.

8 Q. And that's what the Office of Inspector General concluded  
9 was the case?

10 A. Yes.

11 Q. That the people that trained you were misrepresenting  
12 their credentials in courts of law?

13 A. Again, I don't know if I would characterize it -- they  
14 trained me in the fact that we were only in the unit together  
15 for a short time.

16 Q. Well, you took your first courses in the 1980s, right?

17 A. Yes.

18 Q. And those were the people that were training people back  
19 in 1980?

20 A. They may not have all been in the unit at that time, but  
21 there was certainly some overlap, yes.

22 Q. The Office of Inspector General suggested that the FBI  
23 bomb lab not have unqualified people running the lab?

24 A. I don't know that that was the exact language of the  
25 report.



1 Q. Well, have you read the report?

2 A. I have.

3 Q. So the exact language of the report -- do you want to see  
4 the report?

5 A. I have read it. I don't need to see it.

6 Q. Didn't the Office of Inspector General conclude that  
7 examiners should not draw conclusions that overstate the  
8 significance of the technical or scientific examinations in a  
9 particular case?

10 A. That sounds -- yes.

11 Q. As a result of this Office of Inspector General report,  
12 notices were placed in the personnel files of various  
13 laboratory examiners who performed examinations that might be  
14 tainted, right?

15 A. I cannot speak to what, if anything, was placed in other  
16 people's personnel file.

17 Q. But there's something in your file from the Office of  
18 Inspector General warning people that you worked on cases -- I  
19 am not saying that you were criticized by the Office of  
20 Inspector General -- but warning people that might look at the  
21 cases you worked on and say, look, some of these people were  
22 subject to criticism by the OIG?

23 A. Yes.

24 Q. Now, you also testified you were in the San Francisco  
25 office for a number of years?

1   **A.** I was, from 1985 to 1996.

2   **Q.** You were at times the acting supervisor, right?

3   **A.** Yes, I was.

4   **Q.** Isn't it true that you were the acting supervisor when the  
5 environmental activist Judy Barry was the victim of a car  
6 bombing?

7   **A.** For about 30 minutes, yes.

8   **Q.** But it was that particular time that you sent the people  
9 out to investigate that?

10   **A.** That's right.

11   **Q.** And it turned out that the people you sent out tried to  
12 frame Ms. Barry to be the suspect when in fact she was the  
13 victim of the car bombing?

14   **A.** I wouldn't agree with that, no.

15   **Q.** Well, but a jury agreed with that and entered an award of  
16 \$4.4 million against the FBI; isn't that true?

17   **A.** You know, sir, I would have to look at that verdict. That  
18 doesn't sound like the verdict that I remember, but --

19   **Q.** There was a verdict against the FBI; isn't that true?

20   **A.** There was a civil case held and there were sanctions  
21 against both the FBI and the Oakland Police Department in that  
22 case, yes.

23   **Q.** The very day that these agents were sent out to frame Judy  
24 Barry, you were the acting supervisor?

25   **A.** My boss was at lunch, so yes, I was the acting supervisor.

1 Q. So you've just testified that the devices in this  
2 particular case were incendiary fire bombs, right?

3 A. Yes.

4 Q. That was your testimony?

5 A. Yes.

6 Q. Are you aware of the Technical Working Group on Fires and  
7 Explosives?

8 A. I have heard of them.

9 Q. TWGFEX?

10 A. Yes.

11 Q. Is this a reputable organization?

12 A. I know some of the members of it. I have never  
13 participated in any of their meetings or proceedings, but I do  
14 know some of the members.

15 Q. There are FBI agents that participate in the meetings?

16 A. I don't know that they are agents, but they are FBI  
17 employees.

18 Q. Scientists?

19 A. That may be.

20 Q. Are you familiar with TWGFEX's definitions?

21 A. I have read some of them, yes.

22 Q. It's true, is it not, that TWGFEX defines a bomb as a  
23 device containing an explosive incendiary or chemical material  
24 designed to explode?

25 A. I have read that definition, yes.

1 Q. So explosions are different than combustion fires; isn't  
2 that true?

3 A. Well, not really. An explosion is a rapid burning. Any  
4 material that ignites gives off heat; gives off gas. Even  
5 when you light a match, you've created a very, very small  
6 explosion, not one that you'd be able to register really in  
7 any way other than seeing that match burn.

8 You can go right up the scale then in terms of burning.  
9 When we get to an explosion which some people refer to as a  
10 detonation, there the burning is so fast that it's almost  
11 instantaneous.

12 Q. Well, don't explosions have a build up of pressure?

13 A. Not necessarily, no. That's a very narrow definition of  
14 an explosion. An explosion releases gases. It's like I said,  
15 lighting a match. If we were to light a match here in the  
16 courtroom, we would have a very, very small explosion.

17 Q. So by your definition, a match is a bomb, an incendiary  
18 bomb?

19 A. No, that's not the definition that I would use.

20 Q. So every time you strike a match, there's an explosion,  
21 and if you have an explosion, then it's a bomb, right?

22 MR. BARTLETT: Objection, Your Honor. He just said  
23 he didn't agree with it.

24 THE COURT: Next question.

25 BY MR. FOX:

1 Q. Well, you've published -- you've been interviewed by the  
2 media about your work, right?

3 A. I have.

4 Q. You were interviewed by USA Today back on April 5, 2001?

5 A. Yes, I recall that.

6 Q. Just a couple weeks after you lied at the FBI  
7 headquarters?

8 A. No, sir; a couple weeks after the incident that took  
9 place, yes.

10 Q. Where you lied?

11 A. Where I was less than completely honest.

12 Q. And this was an article about bombs and explosives, right?

13 A. The interview touched on that, yes. It was actually not  
14 an interview. It was an online chat. I don't know the term.  
15 A series of questions were posed online and I answered them.

16 Q. It's true that every time in that online chat that you  
17 talked about bombs, you talked about explosions, right?

18 A. Yes, in that case I was talking about detonations, for the  
19 most part.

20 Q. Every time you talked about bombs, you talked about  
21 explosions, right?

22 A. Again, sir, I'd have to review that. It's been a long  
23 time since I have looked at that, but I talked about the  
24 bombing cases that I had worked on.

25 Q. Well, let's move back to this case. You wrote a report in

1 this case, right, in June of 2001?

2 A. I did.

3 Q. And that's in front of you marked for identification as  
4 A-144.

5 A. This is a copy of my report, yes.

6 Q. Now, at no point in that report did you ever describe the  
7 devices at the Center for Urban Horticulture as bombs; isn't  
8 that true?

9 A. Yes, I used the term improvised incendiary device.

10 Q. So there's no mention of bombs in that report, right?

11 A. Well, in my experience --

12 Q. No, I am asking you what's in your report.

13 A. In my report, I did not use the word "bomb." Yes, sir,  
14 that's correct.

15 Q. You don't mention destructive devices?

16 A. I do not.

17 Q. In fact, the first time that you ever described anything  
18 in writing that these devices were bombs of some sort was just  
19 a few weeks ago, right?

20 A. Yes. I was asked to give a written statement of what's  
21 called a basis of my conclusion, and in that statement I did  
22 use those terms.

23 Q. You provided that to Mr. Bartlett in preparation for this  
24 trial?

25 A. That's right.

- 1 Q. But in the six years between 2001 and 2008 --  
2 six-and-a-half years -- you never issued any reports using the  
3 word "bomb?"
- 4 A. You mean in this case?
- 5 Q. In this case.
- 6 A. That's right. The only report I have issued in this case  
7 is the one we are looking at.
- 8 Q. Before you sent that letter to Mr. Bartlett using the word  
9 "bomb" in preparation for this trial, I sent you a letter,  
10 right?
- 11 A. Yes, you did.
- 12 Q. Asking you for the basis of your opinion, right?
- 13 A. Yes, sir.
- 14 Q. And I sent it to you as an e-mail attachment, right?
- 15 A. Yes.
- 16 Q. I asked you a whole series of questions, did I not?
- 17 A. You did.
- 18 Q. I asked you if you could provide me with a basis and  
19 reasons for your conclusion that the devices at issue met the  
20 definition of incendiary bombs, right?
- 21 A. Yes.
- 22 Q. I asked you if you could provide me with any protocol  
23 supported by scientific literature cites that support your  
24 conclusion, right?
- 25 A. That's right.

1 Q. I asked you what your definition of a bomb was, right?

2 A. Yes, sir.

3 Q. I asked you when you first reached the conclusion that the  
4 devices meet the definition of bombs?

5 A. Yes.

6 Q. I asked you to list any other cases that you worked on  
7 where you examined and analyzed devices similar to the ones  
8 used in the Center for Urban Horticulture case, right?

9 A. Yes, sir.

10 Q. I asked you if the FBI had any databases of bombs analyzed  
11 by its laboratories and, if so, are there any references in  
12 those databases to devices similar to the ones used in this  
13 case; is that right?

14 A. Yes.

15 Q. I asked you if you could give me a copy of those  
16 databases, right?

17 A. Yes.

18 Q. I asked you to give me a list of all the cases that you've  
19 been involved in as a bomb technician?

20 A. Yes.

21 Q. I asked you if the professional affiliations and  
22 publications on your resume were accurate, right?

23 A. Yes, sir.

24 Q. Or complete?

25 A. Yes.



1 Q. I also asked to set up a telephone conference with you so  
2 I could talk to you before you testified about your  
3 conclusions?

4 A. Yes, sir.

5 Q. You sent me back an e-mail, right?

6 A. I did.

7 Q. You said, "I decline your request for a telephone  
8 conference in this matter?"

9 A. That's right.

10 Q. "You will shortly receive the document I prepared at the  
11 request of Mark Bartlett which addresses many of your  
12 questions," right?

13 A. Yes, sir.

14 Q. So I would like to direct you to A-147. It's been marked  
15 for identification as A-147.

16 A. Yes, sir.

17 Q. That is, in fact, the letter you prepared addressing many  
18 of my concerns, right?

19 A. Yes, sir.

20 Q. Now, is it not true that you didn't answer most of the  
21 questions I asked?

22 A. To the best of my ability in this letter here, I was  
23 hoping to give you the bases and reasons for my conclusion,  
24 which included, I think, most of the questions.

25 Q. Well, you didn't give me one cite to any definition in the

1 scientific literature to support your conclusion; isn't that  
2 true?

3 **A.** That's right.

4 **Q.** You didn't mention any other investigations where you  
5 worked with similar devices?

6 **A.** I mentioned the fact that in my experience, I have seen  
7 this type of device on other occasions.

8 **Q.** You didn't tell me which occasions those were, did you?

9 **A.** That's right.

10 **Q.** You didn't talk about any databases that the FBI has about  
11 bombs, did you?

12 **A.** No.

13 **Q.** You didn't answer that question, right?

14 **A.** No.

15 **Q.** So basically, your letter just said, well, I have  
16 concluded, based on my training and experience, that it's a  
17 bomb, so therefore I have answered your questions, right?

18 **A.** No, sir. Again, we are here today in this courtroom, and  
19 it's been my experience as an expert witness in a number of  
20 other cases, that this is certainly an appropriate forum to  
21 discuss these matters before the jury.

22 **Q.** But you didn't feel like you wanted to share any of your  
23 bases or opinions or the basis of your opinions with anyone  
24 before you came to court; isn't that true?

25 **A.** No, sir, I have given you here the basis for my opinion

1 right in this letter.

2 Q. Which includes no reference to any scientific literature,  
3 no specific cites.

4 A. Again, I am happy to discuss that with you now.

5 Q. I understand. I understand.

6 You don't believe that by you discussing this with me now  
7 you are not repeating the very same problem that the Office of  
8 Inspector General criticized your lab for, having  
9 non-scientists testifying outside their area of expertise?

10 A. Sir, I am in no way suggesting that I am presenting myself  
11 to you today as a scientist in the question of explosives. I  
12 was, and continue to be, a forensic scientist in the sense  
13 that I have examined material in a laboratory and issued a  
14 report. But I have given you also the background and the  
15 bases on which I reached my conclusions, which is technical in  
16 nature and not scientific.

17 Q. But you just said you were a forensic scientist.

18 A. That's right.

19 Q. But you have no training to be a scientist.

20 A. Sir, you are parsing a term out rather finally there. A  
21 forensic scientist is one who uses scientific methods to study  
22 problems of a legal nature. So I used -- and I give you here  
23 the scientific methods that I used in this letter.

24 Q. Without any reference to any literature. But I will move  
25 on. Let's talk about your conclusions that this device is a

1 bomb.

2 **A.** Yes.

3 **Q.** When you reviewed Jane Stephan's report, you relied on her  
4 to give you information about the scene at the Center for  
5 Urban Horticulture, right?

6 **A.** I don't recall if she was the author of it, but I did read  
7 some description of the scene, and I also reviewed a number of  
8 photographs that were taken at the scene by the agents there.

9 **Q.** There actually was no evidence in any of those photographs  
10 or reports of any explosion taking place?

11 **A.** Well, I saw quite a fire.

12 **Q.** You saw quite a fire, but there were no craters, right?

13 **A.** No.

14 **Q.** A crater is usually the result of -- can be a result of an  
15 explosion, right?

16 **A.** It can be.

17 **Q.** When you are looking at bomb scene investigations, you  
18 look for things like craters, right?

19 **A.** Not always. Craters are generally only present when you  
20 have a large quantity of explosive material. I have worked  
21 bombing cases throughout my career where there was no crater  
22 at all. Sometimes it has to do with the surface of the road.  
23 I have seen large bombs where they were on a hard road  
24 surface, and you could barely tell that it had dented that  
25 material. So a crater is only one very small part.

1           MR. BARTLETT:  Objection, Your Honor.  Mr. Fox is  
2 going into an erroneous definition --

3           THE COURT:  Well, I will take that up.  I want you to  
4 ask him, Mr. Fox, and stay into the charge as it is laid out  
5 by the statute which the jury will be given in terms of  
6 instructions to them as to how to view this evidence.

7           MR. FOX:  All right.

8 BY MR. FOX:

9 Q.  So your conclusion that this is an incendiary bomb rests  
10 upon the fact that there's a timing device?

11 A.  That's certainly one important portion of it, yes.

12 Q.  So if someone hand-lit gasoline and didn't have a timing  
13 device, would that be a bomb?

14 A.  My understanding of the statute in this case --

15 Q.  I am not asking your opinion as a lawyer.  I am asking  
16 your opinion as a forensic technician.

17 A.  As a forensic scientist, understanding the law is an  
18 important part of what we do because often definitions are  
19 significant.

20       For example, in this case, an incendiary bomb -- my  
21 understanding of it is -- is a device that causes a fire.  I  
22 saw evidence of a timing system, and to my training and to my  
23 experience, a timing system is often found in an incendiary  
24 bomb.

25 Q.  Well, your conclusion that an incendiary bomb is a device

1 that causes a fire -- that's your conclusion?

2 **A.** One of the results of an incendiary bomb can be a fire;  
3 not every incendiary bomb works. I have seen a number of  
4 incendiary bombs that were built for that purpose that never  
5 ignited. That doesn't mean that they weren't incendiary  
6 bombs, just because they didn't cause a fire.

7 **Q.** But isn't the time delay mechanism just a way that someone  
8 could leave the scene before it goes off?

9 **A.** In my experience, a time delay is a very important part of  
10 this. To light a match and to throw it into a pile of rags  
11 certainly can cause a fire. That is not what I would call an  
12 incendiary bomb. It certainly caused a fire, and that's not a  
13 good thing, but I am not going to characterize that as an  
14 incendiary bomb.

15 **Q.** The fact that you are using -- didn't you just say that an  
16 incendiary bomb is a device that causes a fire?

17 **A.** It can cause a fire.

18 **Q.** So let's say you have someone that sets cans of gasoline  
19 at a ski lodge in Vail, Colorado -- there's no timing device,  
20 there's no fuses, no ignition sequence; all there is is a  
21 match or a fire starter or something like that. Would that be  
22 an incendiary bomb?

23 **A.** It could be. The scenario as you've laid it out there  
24 doesn't sound like an incendiary bomb, but it could be.

25 **Q.** Is the fact that there's a road flare -- is that part of

1 your conclusion?

2 **A.** A road flare is certainly important in this case. If you  
3 are going to reliably start a fire, if you take a match and  
4 you just were to toss a match into a puddle of gasoline, most  
5 of the time the gasoline is not going to ignite. You need  
6 something a little bit more robust; you need a lot more flame,  
7 generally, to ignite gasoline, especially gasoline where it's  
8 in a container where the fumes may be contained within the  
9 plastic container or the bladder.

10 **Q.** How about if you had an incense stick that led to a  
11 kerosene soaked sponge?

12 **A.** Yes, I have seen that used in a number of incendiary  
13 bombs; yes.

14 **Q.** So the fact that you have a kerosene-soaked sponge, that  
15 turns something from a non-bomb into a bomb?

16 **A.** Well, you mentioned an incense stick. The incense stick  
17 is a time delay. When you light the incense, it burns down at  
18 a certain rate until it reaches whatever its destination is.  
19 In this case, you described the soaked sponge.

20 **Q.** So in your conclusion, the time delay is what separates an  
21 incendiary bomb from just a fire?

22 **A.** I wouldn't draw a line quite that finally. A time delay  
23 is often an important part of the construction of the  
24 incendiary bomb to get away. It doesn't make any sense to  
25 build a bomb and be standing right next to it when it goes

1 off. That doesn't mean you can't do that. I mean, we  
2 certainly have suicide bombs in this world that don't have  
3 time delays.

4 Q. Can't people start fires by just spreading gasoline around  
5 and throwing something in to light it?

6 A. Yes, absolutely.

7 Q. It has the same destructive effect?

8 A. It absolutely does.

9 Q. How about the fact that there's a road flare. Is the road  
10 flare the key factor?

11 A. You are asking me to pick out one thing in a large number  
12 of items. No, the road flare is not the key. It's certainly  
13 an important item among others.

14 Q. In fact, if you just had the road flare -- the road flare  
15 is capable of burning for, what, 15 minutes or so?

16 A. Depends on the model, yes.

17 Q. That certainly can set something on fire, right?

18 A. Absolutely.

19 Q. But the road flare wouldn't be a bomb, would it?

20 A. A road flare, all on its own, no; I wouldn't say that's an  
21 incendiary bomb.

22 Q. In fact, you've dealt with hoax bomb cases where there  
23 have been nothing more than road flares that looked like  
24 bombs, right?

25 A. Yes.



1 Q. Your conclusion is that no explosives or detonating  
2 devices were observed on the hoax bomb because it's just a  
3 road flare?

4 A. That's right.

5 Q. If I could have one more minute.

6 MR. FOX: I have nothing further.

7 MR. BARTLETT: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BARTLETT:

10 Q. During his cross-examination, Mr. Fox was asking you about  
11 a case in San Francisco involving a woman named Judy Barry and  
12 a civil lawsuit.

13 Did you have anything to do with that case?

14 A. I did not.

15 Q. During his cross-examination, Mr. Fox was also asking you  
16 about an investigation done at the lab and people being fired.  
17 Were you fired from the lab?

18 A. No.

19 Q. Were you one of the people they retained?

20 A. Yes.

21 MR. BARTLETT: No further questions.

22 RECROSS-EXAMINATION

23 BY MR. FOX:

24 Q. Well, you are not being completely forthright here. You  
25 were involved in the Judy Barry case, weren't you?

1 A. I took a phone call about an incident and I directed  
2 various agents to go to a crime scene.

3 Q. Well, didn't you testify in that case?

4 A. I testified to the statement I just gave you.

5 Q. So you did have some involvement in the case?

6 A. I was not involved in the investigation. I was involved  
7 in the civil litigation.

8 Q. And you were a witness in the case?

9 A. I was a witness in the civil lawsuit, yes, sir; I was.

10 Q. Thank you very much.

11 MR. BARTLETT: Nothing further, Your Honor.

12 THE COURT: May this witness be excused? Mr. Fox,  
13 may this witness be excused?

14 MR. FOX: Yes.

15 THE COURT: You are excused.

16 MR. BARTLETT: With the Court's permission, could I  
17 retrieve some of the items over here.

18 THE COURT: Yes.

19 Mr. Bartlett, this is your witness?

20 MR. FRIEDMAN: She's my witness, Your Honor.

21 LACEY PHILLABAUM, called as a witness, duly sworn.

22 THE COURT: All right. Take the witness chair.

23 DIRECT EXAMINATION

24 BY MR. FRIEDMAN:

25 Q. Good afternoon, Ms. Phillabaum.

1       Where are you from?

2   **A.** I am from Spokane, Washington, actually.

3   **Q.** Were you born there?

4   **A.** No, I was born in Yakima and I lived in Olympia until I  
5 was five.

6   **Q.** And then you moved to Spokane?

7   **A.** Yes.

8   **Q.** For how long did you live in Spokane?

9   **A.** Until I was 18.

10   **Q.** You went to high school there?

11   **A.** I went to Shadle Park High School.

12   **Q.** Did you graduate from that high school?

13   **A.** In 1993.

14   **Q.** What did you do after you graduated from high school?

15   **A.** I went to the University of Oregon in Eugene.

16   **Q.** What did you study there?

17   **A.** I studied art history. I graduated in 1996 with a  
18 Bachelor of Arts in art history.

19   **Q.** So you were there three years?

20   **A.** Uh-huh.

21   **Q.** Where did you work after you finished college?

22   **A.** I worked at the Earth First Journal for an environmental  
23 organization.

24   **Q.** The Earth First Journal is a journal of which  
25 organization?

- 1   **A.**   An environmental group.
- 2   **Q.**   What's that group called?
- 3   **A.**   Earth First.
- 4   **Q.**   On the spectrum of environmental organizations, can you
- 5   tell us where Earth First falls or what it is?
- 6   **A.**   It's probably the most radical group.
- 7   **Q.**   Does it have a motto or --
- 8   **A.**   No compromise in defense of Mother Earth, is the motto.
- 9   **Q.**   Does Earth First take a position on civil disobedience?
- 10  **A.**   Generally Earth First advocates direct action on behalf of
- 11  the environment.
- 12  **Q.**   You said you work for the Earth First Journal?
- 13  **A.**   That's correct.
- 14  **Q.**   What is that?
- 15  **A.**   It's the newspaper of the group.
- 16  **Q.**   What was your job at the Earth First Journal?
- 17  **A.**   I was an editor there.
- 18  **Q.**   For how long did you work there?
- 19  **A.**   Let's see, I worked there, I think, starting in the winter
- 20  of 1996, early 1997, through spring 1999.
- 21  **Q.**   Why did you leave the journal?
- 22  **A.**   It was a lot of work and I was worn-out.
- 23  **Q.**   After you left the Earth First Journal, what did you do?
- 24  **A.**   I traveled in Europe for six months.
- 25  **Q.**   Then you came back to the United States?

1   **A.** Uh-huh.

2   **Q.** When you came back, where did you work?

3   **A.** Let's see, I did sort of odd jobs for a couple months, and  
4 then I got a job in a law office, and I worked there for just  
5 a few months. Then I started working for Oregon Tilth in  
6 February of 2001, I believe.

7   **Q.** I probably should have asked. When you worked for the  
8 Earth First Journal, was that also in Eugene?

9   **A.** Yes, that's also in Eugene.

10   **Q.** And when you worked for Oregon Tilth, where were you  
11 living and working?

12   **A.** The organization is based in Salem, but I started -- when  
13 I first started working there I lived in Eugene, and then I  
14 moved to Bend later.

15   **Q.** When did you move from Eugene to Bend?

16   **A.** December 2001.

17   **Q.** Can you tell us, what is Oregon Tilth?

18   **A.** It's a trade paper for an organic certifier. They certify  
19 that a farm that calls itself organic meets the national  
20 organic standards.

21   **Q.** Is it fair to say that's a more mainstream environmental  
22 group than Earth First?

23   **A.** Yes, it's a trade paper for the other group, so yes, it  
24 is.

25   **Q.** What did you do for Oregon Tilth?

1   **A.** I edited their paper.

2   **Q.** Were you the editor-in-chief or top editor?

3   **A.** It's kind of a one-person show. I did all the desktop  
4 publishing, editing, soliciting articles, everything.

5   **Q.** For how long did you keep working for Oregon TIlth?

6   **A.** I worked there through February 2005.

7   **Q.** And what did you do? What happened in February of 2005?

8   **A.** I wanted to be writing full-time, so I was looking for a  
9 job, and I moved to Charlottesville, Virginia, and took a job  
10 there.

11   **Q.** Where were you working there?

12   **A.** At an alternative newsweekly called C-Ville Weekly.

13   **Q.** Is that something like the Seattle Weekly?

14   **A.** Well -- yeah, yeah.

15   **Q.** There's probably a Tacoma version of that; I am not sure.

16   **A.** Yeah, like Seattle Weekly or the Stranger or something  
17 like that.

18   **Q.** For how long did you stay at the Charlottesville's Daily?

19   **A.** The C-Ville Weekly, I was there for -- not very long, like  
20 three months, four months.

21   **Q.** Why did you leave there?

22   **A.** It didn't work out. The editor didn't like me, we had a  
23 conflict of personalities.

24   **Q.** After you left there, where did you go work?

25   **A.** I worked in Washington, D.C., doing freelance journalism,

1 and I worked also part-time for a media organization in  
2 Washington.

3 Q. Did you live in Washington, D.C.?

4 A. Uh-huh.

5 Q. Now, at a certain point, the investigation in this case  
6 lead to a number of people being arrested; is that correct?

7 A. Uh-huh.

8 Q. When was that?

9 A. December 7, 2005.

10 Q. After that happened, did you move home to Spokane?

11 A. No. First I thought I might live in D.C. I didn't know  
12 what was going to happen, but in -- just after the new year,  
13 so within a month, I was pretty sure I needed to be on the  
14 West Coast, and I came back to the West Coast.

15 Q. You subsequently have been charged and pled guilty; is  
16 that correct?

17 A. That's correct.

18 Q. And I am sure the jury has noticed you are wearing khakis.  
19 Why is that?

20 A. I'm in prison.

21 Q. Did you fail to make bail, or how did you end up there?

22 A. I self-surrendered. The case has gone on so long and I  
23 wanted to start doing my time, so I self-surrendered so I  
24 could start putting this behind me.

25 Q. You are testifying today pursuant to a plea bargain; is

1 that correct?

2 A. That's correct.

3 Q. You are familiar with the terms of that, I assume?

4 A. I think so.

5 Q. I would like to ask you to look at Exhibit 792-B. There  
6 should be a stack of folders there with numbers on top. Can  
7 you look at 792-B and tell me if you recognize that?

8 A. This is my plea agreement.

9 MR. FRIEDMAN: The government offers Exhibit No.  
10 792-B.

11 MR. BLOOM: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 792-B admitted.)

14 BY MR. FRIEDMAN:

15 Q. Ms. Philabaum, under the terms of your plea agreement,  
16 how many crimes did you plead guilty to?

17 A. I think there's three counts in the plea agreement.

18 Q. Do you recall what those crimes are?

19 A. Well, I pled guilty to the University of Washington arson.  
20 Are you asking me about the counts or every crime that's  
21 mentioned?

22 Q. The counts to which you pled guilty.

23 A. Okay. I pled guilty to conspiracy, arson, and use or  
24 possession of an incendiary device.

25 MR. FRIEDMAN: Your Honor, may we publish Exhibit



1 792-B for the jury?

2 THE COURT: It is admitted.

3 BY MR. FRIEDMAN:

4 Q. Ms. Philabaum, if you look at the first page, at the  
5 bottom, do you see a section labeled "The Charges?"

6 A. Yes.

7 Q. And that lists the three crimes to which you pled guilty?

8 A. Yes.

9 Q. There's only one on this page; that's the conspiracy  
10 count?

11 A. Right.

12 Q. Can you describe to us the conspiracy to which you pled  
13 guilty?

14 A. I pled guilty to a larger conspiracy which included the  
15 University of Washington arson.

16 Q. Who were the other people named in the conspiracy to which  
17 you pled guilty?

18 A. Briana Waters, Justin Solondz, Avalon, Bill Rodgers,  
19 and -- I am sorry, I am nervous -- myself and Jen Kolar.

20 Q. And others known and unknown?

21 A. And others, yeah.

22 MR. BLOOM: I am going to ask that there be no  
23 further leading, please.

24 BY MR. FRIEDMAN:

25 Q. If you turn the page, do you see a description of the

1 second crime to which you pled guilty?

2 A. Uh-huh.

3 Q. Can you tell us what that is?

4 A. Arson.

5 Q. Was that a specific arson?

6 A. The University of Washington arson.

7 Q. And then the third crime?

8 A. Use of destructive device during a crime of violence.

9 Q. Under the terms of your plea agreement, what did you agree  
10 to do?

11 A. Tell the truth.

12 Q. Can I get you to be a little broader? Did you agree to  
13 cooperate with the government?

14 MR. BLOOM: Excuse me. I object to leading.

15 THE COURT: Counsel, this is not so leading that we  
16 are losing grip here, so let's make an objection when it  
17 really would do something other than slow the case down.

18 MR. BLOOM: I don't want to slow the case down,  
19 Judge; I am asking the witness be permitted to answer the  
20 question.

21 THE COURT: I understand. I have an answer. Be  
22 seated, please.

23 Question.

24 BY MR. FRIEDMAN:

25 Q. Ms. Philabaum, have you agreed to cooperate with the

1 government?

2 A. Yes.

3 Q. What do you understand that to require?

4 A. To tell the truth, regardless of the impact.

5 Q. In return, what has the government agreed to do?

6 A. I have a plea deal that means that I will serve between  
7 three and five years in prison.

8 Q. Ultimately, who will decide what sentence you receive  
9 within that range?

10 A. Judge Burgess does.

11 Q. The government gets to make a recommendation?

12 MR. BLOOM: Objection. Leading.

13 THE COURT: Question.

14 BY MR. FRIEDMAN:

15 Q. Does the government get to make a recommendation?

16 A. I think so.

17 Q. Now, if you had not entered into this plea agreement, what  
18 understanding do you have of what penalties you might have  
19 been facing?

20 A. For the first count, conspiracy, is zero to five years.  
21 Arson is five to twenty years. And 924(c), using or  
22 possessing an incendiary device in furtherance of a crime of  
23 violence, is a mandatory minimum of 30 years, to run  
24 consecutive with the other charges.

25 Q. I would ask you to turn to the third page of your plea

1 agreement, if you would.

2 Do you see a section labeled "The Penalties?"

3 A. Yes.

4 Q. Would you take a look at that and tell me if that's  
5 consistent with what you just said?

6 A. It looks the same. I didn't realize it was mandatory  
7 minimum of five years for arson, but --

8 Q. And the 30-year penalty, to which count does that apply?

9 A. The 30 years, that's for 924(c), using or possessing an  
10 incendiary device.

11 Q. Does it apply to any of the others?

12 A. No.

13 Q. Why did you decide to cooperate?

14 A. Well, I felt like the truth was coming out, and having  
15 worked as a journalist, I kind of believed that that was  
16 likely to happen. And I had regrets about what had happened,  
17 and I did not want to spend 35 years in prison.

18 Q. Was it an easy decision for you to decide to cooperate?

19 A. No. It's been excruciating, every day beforehand and  
20 every day since.

21 Q. Do you bear any ill will towards Ms. Waters?

22 A. I have a lot of sympathy for everyone involved in this  
23 case.

24 Q. Now, when did you first become involved in environmental  
25 activism?

1 A. In 1995 when I was attending the University of Oregon.

2 Q. What was the first thing you did that was --

3 A. I was involved in a campaign to protect an area called  
4 Warner Creek, to stop a timber sale from happening there.

5 Q. Where is Warner Creek?

6 A. It's in Oregon, near Eugene, outside of Oakland --  
7 Oakridge.

8 Q. Were there a number of people involved in this?

9 A. It was a large campaign and started out walks in the  
10 forest, protests at the federal building, and eventually we  
11 had a road blockade that blocked the road and blocked access  
12 to the timber sale.

13 Q. Do you recall any of the other individuals who were there,  
14 also involved in this protest?

15 A. I met Bill Rodgers there.

16 Q. Was he involved in the protest?

17 A. Oh, yeah.

18 Q. Why do you say, "Oh, yeah," in that way?

19 A. I don't know. I'm nervous.

20 Q. Did he have a particular role? Was he a leader or just  
21 another member of the protest?

22 A. He was there. I would say he was experienced at that sort  
23 of thing so people looked at him for advice.

24 Q. Would you take a look at Exhibit 111 and tell me if you  
25 recognize that?

1 A. Yes, I recognize it.

2 Q. Can you tell us what it is?

3 A. It's a picture of Bill Rodgers.

4 MR. FRIEDMAN: Government offers Exhibit 111.

5 MR. BLOOM: No objection.

6 THE COURT: Admitted.

7 (Exhibit No. 111 admitted.)

8 BY MR. FRIEDMAN:

9 Q. Now, by what name did you know Mr. Rodgers?

10 A. I knew him as Avalon.

11 Q. Is that how you knew him from even the time of Warner  
12 Creek?

13 A. I knew him as Avalon there.

14 Q. How well did you get to know Mr. Rodgers, Avalon, at  
15 Warner Creek?

16 A. The campaign went on for about a year and a half, so by  
17 the end I had a fairly high trust level with him.

18 Q. After the Warner Creek campaign, were you involved in  
19 other environmental issues or campaigns?

20 A. Uh-huh. I went to protests at other timber sales. I went  
21 to protests in California regarding the Red Woods and Idaho,  
22 other places.

23 Q. Were you arrested at any of those protests?

24 A. Yes. I have been arrested for protesting, I am not sure  
25 what the charge was, I think three times for trespass, for

1 protest-related things.

2 Q. Did you see Avalon at any of these later protests that  
3 you've just described to us?

4 A. Over the years, yes.

5 Q. Can you tell us how your relationship with Avalon  
6 developed over time?

7 A. Well, I put a lot of -- I had a lot of trust in him. In  
8 the sort of uncomfortable consensus group meetings that we  
9 often had, Avalon was someone who was frequently the  
10 facilitator, which is a difficult job because you have to keep  
11 everyone on task and from fighting. And he was always very  
12 reasonable and moderate in those meetings, and I tended to  
13 identify with that.

14 Q. Did he play a leadership role in those meetings?

15 A. I would say it would be more accurate to call it a  
16 facilitator.

17 Q. In 1999, do you recall the WTO protests in Seattle?

18 A. Yes.

19 Q. Were you involved with anything before those protests  
20 happened, relating to the protests?

21 A. I helped do some of the organizing, like look for places  
22 for people to stay. I did outreach, you know, to get more  
23 people there. Posturing. I was looking at the companies who  
24 might have an agenda who were also sponsoring, meeting, that  
25 sort of thing.

1 Q. Did you see a link between World Trade, WTO, and the  
2 environment?

3 A. Yes.

4 Q. Can you explain that to us?

5 A. Well, I guess we'd been doing these sort of place-by-place  
6 campaigns, and we felt like global trade was an overarching  
7 structure that was pushing resource exploitation in a number  
8 of areas.

9 Q. So was your participation in WTO the result of your  
10 environmental activism?

11 A. Yes.

12 Q. Were you present during the WTO protests themselves?

13 A. Yes.

14 Q. Were you alone or were you with other people during that?

15 A. No. I started working with a group of people that  
16 intended to go to the Cargill grain elevator and have a  
17 protest there.

18 Q. What's the Cargill grain elevator?

19 A. I am not sure how to explain it more than that. It's a  
20 grain elevator owned by Cargill.

21 Q. In Seattle?

22 A. Yes.

23 Q. Why were you going to have a protest there?

24 A. Trade policies that we disagreed with.

25 Q. What kind of a protest were you planning?



1   **A.** We were going to do like an office occupation and shut  
2   down the office for the day.

3   **Q.** And who were the other individuals in this group?

4   **A.** Avalon was there. Suzanne Savoie was there. Daniel  
5   McGowan was there. Joy Zacher I met there.

6   **Q.** Would you take a look at a folder labeled as Exhibit 117.  
7   Tell me if you recognize that.

8               THE COURT: What was that number again?

9               MR. FRIEDMAN: 117, Your Honor.

10   **A.** Yes, I recognize it.

11   BY MR. FRIEDMAN:

12   **Q.** Who is that?

13   **A.** That's Daniel McGowan.

14   **Q.** One of the individuals who went there?

15   **A.** Uh-huh.

16               MR. FRIEDMAN: Government offers Exhibit 117.

17               MR. BLOOM: No objection.

18               THE COURT: Admitted.

19                               (Exhibit No. 117 admitted.)

20   BY MR. FRIEDMAN:

21   **Q.** And would you take a look at a folder, Exhibit 120.

22   **A.** Okay.

23   **Q.** Do you recognize that?

24   **A.** That's Suzanne Savoie.

25               MR. FRIEDMAN: Government offers Exhibit 120.

1 MR. BLOOM: No objection.

2 THE COURT: Admitted.

3 (Exhibit No. 120 admitted.)

4 BY MR. FRIEDMAN:

5 Q. And would you take a look at Exhibit 119?

6 A. Okay. That's Joy Zacher.

7 MR. FRIEDMAN: Government offers Exhibit 119.

8 MR. BLOOM: No objection.

9 THE COURT: Admitted.

10 (Exhibit No. 119 admitted.)

11 BY MR. FRIEDMAN:

12 Q. So all of these individuals were in this group?

13 A. Amongst others, yes.

14 Q. Did the group ultimately end up taking over Cargill's  
15 grain elevator?

16 A. No. That protest didn't end up happening. We just went  
17 downtown and ended up being part of a larger protest.

18 Q. You were present during --

19 A. Also, you know, the people blockading the roads. And then  
20 later when people started breaking windows and stuff, some of  
21 those people I was with did that. I spray painted a building  
22 at one point.

23 Q. Did you break any windows?

24 A. No.

25 Q. Did you cause any other property damage?

1   **A.**   No.

2   **Q.**   Did you perceive the WTO protest as being a success?

3   **A.**   We thought it was a success because the trade minister,  
4   the meeting did not lead to a new round of negotiations.

5   **Q.**   Did that lead to any other action or activity by this  
6   group?

7   **A.**   The people who had worked together in that group of people  
8   sort of developed an affinity with each other, and Avalon came  
9   to get us back together and continue working together, if  
10   not -- obviously not on that protest, but on other things.

11   **Q.**   So what did Avalon do as a result?

12   **A.**   We started having meetings in Eugene in March 2001.

13   **Q.**   Is there a name that you -- how many of these meetings did  
14   you have?

15   **A.**   Ultimately there were five meetings.

16   **Q.**   Were they all in Eugene?

17   **A.**   No, they happened in different places. The first was in  
18   Eugene; the second was in Arizona; the third was in  
19   California; the fourth, I think, was in Washington; and the  
20   fifth was in -- outside of Bend, in Sisters, Oregon.

21   **Q.**   I think you said the first was March of 2001. Is that  
22   what you meant to say?

23   **A.**   No, I meant March 2000.

24   **Q.**   Over what time span did these five meetings take place?

25   **A.**   Until May 2001.

1 Q. So roughly 15 months?

2 A. Uh-huh.

3 Q. How many people went to these meetings?

4 A. Between 10 and 12.

5 Q. Was it generally the same people, or totally different  
6 people?

7 A. It got bigger as time went on.

8 Q. But was there repetition in who was present?

9 A. Mostly it was the same people, yes.

10 Q. In general, who was at these meetings?

11 A. Do you want me to name everyone? Avalon, myself. Suzanne  
12 was at the first one. Nathan, Joy, Daniel.

13 MR. BLOOM: If you could, just a little slower,  
14 please.

15 THE COURT: All right. Do you want her to go over  
16 them again?

17 MR. BLOOM: Yes, please. I just want to note the  
18 names.

19 THE COURT: Name them again.

20 THE WITNESS: I was there. Suzanne, Nathan -- no,  
21 I'm sorry.

22 Myself, Suzanne, Nathan, Joy, Daniel. Those are the  
23 people relevant, I think.

24 BY MR. FRIEDMAN:

25 Q. So of the group that we talked about a moment ago that

1 were at the WTO protest with you, was Avalon present at these  
2 meetings?

3 A. Oh, yes.

4 Q. And we talked about Suzanne Savoi e. Was she present at  
5 these meetings?

6 A. Yes.

7 Q. We had talked about Daniel McGowan. Was he present?

8 A. Yes.

9 Q. Were there additional people present?

10 A. At the second meeting, Avalon started introducing new  
11 people to the group.

12 Q. Did he introduce other people who ended up being involved  
13 later with you in an arson or arsons?

14 A. At the second meeting, Chelsea was there. At the third  
15 meeting, I believe Jen Kolar and Stan Meyerhoff came for the  
16 first time.

17 Q. Would you look at Exhibit 124, which should be in front of  
18 you?

19 A. Okay.

20 Q. Do you recognize that?

21 A. That's Chelsea Gerlach.

22 MR. FRIEDMAN: Government offers 124.

23 MR. BLOOM: No objection.

24 THE COURT: Admitted.

25 (Exhibit No. 124 admitted.)

1 BY MR. FRIEDMAN:

2 Q. You said she started attending at which meeting?

3 A. The second meeting.

4 Q. And would you look at Exhibit 112 and tell me if you  
5 recognize that?

6 A. That's Jennifer Kolar.

7 MR. FRIEDMAN: Government offers 112.

8 MR. BLOOM: No objection.

9 THE COURT: Admitted.

10 (Exhibit No. 112 admitted.)

11 BY MR. FRIEDMAN:

12 Q. At what meeting did she first appear?

13 A. The third meeting, I believe.

14 MR. BARTLETT: Your Honor, we are having some  
15 technical difficulties. Although the pictures are showing up  
16 here, they are not showing up at the jury.

17 THE COURT: Now are they all showing up?

18 MR. BARTLETT: Yes. Sorry about that.

19 BY MR. FRIEDMAN:

20 Q. Would you look at Exhibit 116 and tell me if you recognize  
21 that person?

22 A. That's Stan Meyerhoff.

23 MR. FRIEDMAN: Government offers Exhibit 116.

24 MR. BLOOM: No objection.

25 THE COURT: Admitted.

1 (Exhibit No. 116 admitted.)

2 BY MR. FRIEDMAN:

3 Q. At what meeting did Mr. Meyerhoff first show up?

4 A. I believe it was at the third meeting.

5 Q. I think you had mentioned someone named Nathan. To whom  
6 were you referring?

7 A. Nathan Block.

8 Q. Would you look at Exhibit 118 and tell me if you recognize  
9 that?

10 A. That's Nathan.

11 MR. FRIEDMAN: Government offers Exhibit 118.

12 MR. BLOOM: No objection.

13 THE COURT: Admitted.

14 (Exhibit No. 118 admitted.)

15 BY MR. FRIEDMAN:

16 Q. Now, do you know someone named Briana Waters?

17 A. Yes.

18 Q. Did she show up at any of these meetings?

19 A. No.

20 Q. Was she present in any way at any of them?

21 A. Not that I know of.

22 Q. Over time, did the subject of the meetings change?

23 A. When we first started, it was sort of, what are we going  
24 to do to inspire the movement? What's the next direction we  
25 are going to go in? How do we stop doing the same thing over

1 and over? And we also talked about particulars of people who  
2 had experience doing direct action, what they were familiar  
3 with. And then as time went on, we became more and more  
4 focused on direct action and sabotage, and eventually, at the  
5 third meeting, we were trained on how to build incendiary  
6 devices.

7 Q. Was there an actual demonstration of how to build  
8 incendiary devices?

9 A. Yes.

10 Q. Who did that?

11 A. Stan and Chelsea.

12 Q. You said you were trained. Did other people try and do  
13 it, or what do you mean by trained?

14 A. The main thing I remember is soldering.

15 Q. What do you remember about that?

16 A. That we tried to solder things together.

17 Q. Things, was it just practice soldering, or things that  
18 would be components of fire bombs?

19 A. Right. I wouldn't call it a fire bomb, but.

20 Q. Devices to burn down buildings?

21 A. Incendiary devices is what I understood it to be.

22 Q. Now, did you do any -- was there any training or  
23 information about how to communicate with each other?

24 A. At the -- well, the first meeting we agreed would be  
25 secret. The second meeting, I think we started setting up



1 ways to communicate anonymously, and those got increasingly  
2 sophisticated over time.

3 Q. So at the beginning, how was that done?

4 A. The first level of secrecy I remember us having was a  
5 generic e-mail address. Then we were supposed to access that  
6 e-mail address through a proxy server which disguised what  
7 computer we were using. Then over time we were using a book  
8 as a method of encryption. Like if you wanted to write  
9 something, you'd write it in code using a book.

10 Then at the third meeting, Jen Kolar taught us how to use  
11 PGP, which we had totally talked about before, but she gave us  
12 each a disk with PGP on it, which was a type of encryption.

13 Q. So these layers were added one after the other, basically?

14 A. Over time they got more sophisticated.

15 Q. What other practical things were taught or discussed at  
16 these meetings?

17 A. Well, how to do reconnaissance at a site. Look at what  
18 was there, take notes of what was there, see when security  
19 passed by. Lock picking. Breaking windows, breaking and  
20 entering.

21 Q. You said that when it started out there was sort of some  
22 discussion of issues on which to focus. Were any decisions  
23 made or reached over time?

24 A. Well, we didn't have a focus, other than just we were all  
25 very passionate about the environment when we started. And we

1 spent a lot of time discussing the philosophy behind that, as  
2 well as doing these other more hands-on things.

3 And we kind of wanted to focus on something together, but  
4 we never made a hard and fast agreement of anything to work on  
5 together, because we decided that the meetings shouldn't  
6 be the group of people who went out and did actions together.  
7 That seemed risky. So we were explicit that those meetings  
8 were not people who were going to go do actions together  
9 exclusively.

10 People could -- subgroups could break off, but we weren't  
11 all going to do the same thing. We decided that in Arizona,  
12 at the second meeting.

13 **Q.** You said the subgroups. The whole meeting wouldn't, but  
14 subgroups might?

15 **A.** That's correct.

16 **Q.** Was the subject -- you said people talked about the  
17 environment and were interested in the environment. Was  
18 genetic engineering something that was discussed?

19 **A.** Oh, yeah. Daniel and Suzanne were very, very interested  
20 in genetic engineering. They really pushed that as an agenda,  
21 and eventually sort of by default that became our agenda. I  
22 wouldn't say it was really the whole group's agenda, but it  
23 was something they were always drawing us back to.

24 **Q.** You referred a moment ago to -- we've talked about William  
25 Rodgers and his nickname Avalon. A moment ago you talked

1 about Suzanne. Can you tell us the last name?

2 **A.** Savoi e.

3 **Q.** Did she have a nickname by which she went?

4 **A.** Indi a.

5 **Q.** And you said Daniel a moment ago?

6 **A.** McGowan.

7 **Q.** Did he have a nickname?

8 **A.** He had a number of different names over the time that I  
9 knew him. Zorro, I think, would have been a common name I  
10 used for him at that point.

11 **Q.** Did most of the other people who were attending these  
12 meetings have nicknames that they used or went by?

13 **A.** Well, going back to our days in the protest movement to  
14 when we were doing that, people generally had some sort of a  
15 nickname that they would go by. And then at these meetings  
16 people adopted different pseudonyms to go by.

17 **Q.** Did you have a name by which you went?

18 **A.** At the meetings? I think everybody pretty much knew I was  
19 Lacey.

20 **Q.** Was that what you were generally called?

21 **A.** I think at times people would call me something else, but  
22 I don't really remember. I think Reba was a name I was called  
23 at one point.

24 **Q.** Now, you've told us about the genetic engineering becoming  
25 a focus and the e-mails. Did you receive a, I guess, an

1 e-mail communication at some point after these meetings, or  
2 after one of these meetings?

3 **A.** At some point, Suzanne invited me to be involved with an  
4 action in Eastern Washington, and she sent me an e-mail about  
5 that.

6 **Q.** Just so it's clear, could I ask you to either use first  
7 and last name or code name, if that's one that's well-known.  
8 When you say Suzanne, you mean --

9 **A.** I mean India.

10 **Q.** How did she get in touch with you?

11 **A.** She sent me an e-mail.

12 **Q.** To your -- do you have a personal e-mail account?

13 **A.** I think it was probably to a generic group account.

14 **Q.** What did she ask you to do in that e-mail?

15 **A.** It was encrypted using all those layers that I talked  
16 about with the book, with the PGP encryption, so I decoded it.  
17 Really, the only encrypted part was the really significant  
18 information, which was a time and a place to meet, or a place  
19 to meet, and that was Starbucks in Pullman, Washington.

20 **Q.** Did you go to that Starbucks?

21 **A.** I drove there with Chelsea Gerlach.

22 **Q.** What did you find when you got there?

23 **A.** We met Suzanne and -- Suzanne or India. And we eventually  
24 ended up doing an action in that area.

25 **Q.** You said you discussed an action in that area?

1 **A.** Yes. We eventually ended up pulling some canola out of  
2 the field, I think.

3 **Q.** Was that the initial plan?

4 **A.** No. Initially there was a different plan, and I had a  
5 disagreement with Suzanne about the target of that action.  
6 She wanted to do something against this barley field and I  
7 didn't believe it was genetically engineered, so we didn't do  
8 that first action. Then we went back at some point later and  
9 did this other action against the canola.

10 **Q.** When you say genetically engineered, what do you  
11 understand that to mean?

12 **A.** A gene from a foreign body has been introduced into the  
13 gene of the plant in question.

14 **Q.** You thought that the barley was not genetically  
15 engineered?

16 **A.** Right.

17 **Q.** How much time passed between your first trip, when you  
18 were going to do that, and you said you went back and did  
19 something different?

20 **A.** I'm not sure.

21 **Q.** When you say you did something different, can you tell us  
22 what you did?

23 **A.** We took these genetically engineered canola plants out of  
24 the ground. It was a small field.

25 **Q.** Roughly how many people were involved in doing that?

1   **A.**   Maybe eight to ten.

2   **Q.**   Whom do you recall being there?

3   **A.**   Myself, Chelsea.

4   **Q.**   Chelsea Gerlach?

5   **A.**   Chelsea Gerlach.   Joyanna Zacher.   Nathan Block.   Justin  
6 Solondz.   Suzanne Savoie.   And either Avalon or Stan, but I'm  
7 not sure.

8   **Q.**   By Stan, do you mean Stan Meyerhoff?

9   **A.**   Stan Meyerhoff.

10   **Q.**   And you've added -- most of these are -- these are names  
11 you talked about before, but you've added one name, Justin  
12 Solondz?

13   **A.**   That's corrected.

14   **Q.**   Would you take a look at Exhibit 115 and tell me if you  
15 recognize that?

16   **A.**   That's Justin Solondz.

17               MR. FRIEDMAN:   Government offers Exhibit 115.

18               MR. BLOOM:   No objection.

19               THE COURT:   Admitted.

20                               (Exhibit No. 115 admitted.)

21   BY MR. FRIEDMAN:

22   **Q.**   Had Mr. Solondz been at any of the -- this series of  
23 meetings you described, was there a name that you all  
24 sometimes referred to them by?

25   **A.**   They were sometimes called the book club meetings.

1 Q. Was Mr. Solondz at any of the book club meetings?

2 A. No.

3 Q. Had any of the other people we've discussed been at the  
4 book club meetings?

5 A. Yes, most of them had.

6 Q. You said you took crops out of the field. How did you do  
7 that?

8 A. I don't remember in particular, but it was basically like  
9 pulling weeds, except it was a small field of weeds. We just  
10 ripped them out of the ground.

11 Q. Was this done during the day or night?

12 A. No, we did it during the night.

13 Q. Do you recall whether you took any precaution to avoid  
14 being noticed?

15 A. Uh-huh. We wore black and I think we probably wore  
16 gloves, and I think that there were lookouts. And we were  
17 dropped off and we walked into the site in a way that we  
18 thought would be inconspicuous.

19 Q. Then after the action?

20 A. After the action we left.

21 Q. Okay. Do you recall whether there was a communiqué issued  
22 after that action?

23 A. I think there was a communiqué, yes.

24 Q. Can you tell us, what is a communiqué?

25 A. A claim of responsibility for the crime.

1 Q. Why would you issue a communiqué?

2 A. So it didn't seem like random destruction, but people  
3 understood that it was undertaken for a specific reason, which  
4 was environmental. We thought we were pursuing environmental  
5 ends.

6 Q. Over time did you have some involvement with issuing  
7 communiqué for different actions?

8 A. I helped write a couple but I never issued any. There was  
9 sort of a process to sending them out anonymously, and I was  
10 not involved in that process.

11 Q. Why would you send them out anonymously?

12 A. It was a claim of responsibility for an illegal action, so  
13 you didn't want to be associated directly with the action.

14 THE COURT: Mr. Friedman, let me ask this question:  
15 It looks like you have a ways to go?

16 MR. FRIEDMAN: I do.

17 THE COURT: Then let's take the afternoon recess at  
18 this time, take a break for about 15 minutes. Don't discuss  
19 the case; leave your books on the chair.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 Any reason -- Mr. Bloom, are you going to say something?

23 Then we will take the recess.

24 MR. FRIEDMAN: Your Honor, we do have the motion that  
25 we had -- the matter we raised before, and I think we should



1 address it before the jury comes back because it's possible we  
2 would get to cross this afternoon.

3 THE COURT: This is on Exhibit 132?

4 MR. FRIEDMAN: It is. We believe that's irrelevant.  
5 It has no relation to anything in the case, and the only  
6 reason the defense is offering it is to try to taint and smear  
7 Ms. Philabaum.

8 THE COURT: I don't know. Let him speak for himself.  
9 What reason are you offering this exhibit?

10 MR. BLOOM: I am not sure yet. It depends on what  
11 the answers are to other questions. If there are issues,  
12 these are letters.

13 You are talking about the letters, right?

14 THE COURT: Talking about A-132, that I understand  
15 you are going to use in cross-examination.

16 MR. BLOOM: May Mr. Fox address that?

17 THE COURT: Well, somebody.

18 MR. FOX: Your Honor, we put that into the packet of  
19 possible impeachment information. I really don't know.

20 THE COURT: I can't answer the question if you don't  
21 know what you are going to do.

22 MR. FOX: We don't know how the direct is going to  
23 go.

24 THE COURT: Then that's premature. I can't answer  
25 that. I don't know what you are trying to do.

1           MR. FRIEDMAN: Could the Court order it not be used  
2 until and unless they raise it with the Court and give a  
3 basis?

4           THE COURT: I don't expect them to do that before  
5 that.

6           MR. BLOOM: That's fine.

7           THE CLERK: All rise, court is in recess.  
8 (Afternoon recess.)

9           THE COURT: You may be seated.  
10 Are we ready to continue?

11          MR. FRIEDMAN: Yes, Your Honor.

12          THE COURT: Bring in the jury.  
13 (Jury present.)

14          THE COURT: You may be seated.  
15 All right. Questions?

16          MR. FRIEDMAN: Thank you, Your Honor.

17 BY MR. FRIEDMAN:

18 Q. Ms. Philabaum, when we broke we were talking about a  
19 communiqué relating to the Monsanto action in Dusty,  
20 Washington.

21 Do you recall that?

22 A. Yes.

23 Q. Would you take a look at Exhibit 273, which should be in a  
24 folder in front of you.

25 A. Yes.

1 Q. Do you recognize that?

2 A. I think this is the communiqué for the field action in  
3 Dusty, Washington.

4 MR. FRIEDMAN: The Government offers 273.

5 MR. BLOOM: No objection.

6 THE COURT: Admitted.

7 (Exhibit No. 273 admitted.)

8 BY MR. FRIEDMAN:

9 Q. I am not going to ask you to take us through it, but could  
10 you read the headline.

11 Could you just read the headline and then the sub headline  
12 for us.

13 A. "Dusty Desperadoes Raid Monsanto. Tuesday, August 1,  
14 2000, Monsanto: Wanted dead, not alive."

15 Q. Ms. Phyllabaum, after this action on the Monsanto fields,  
16 were you involved in an action relating to some poplar trees  
17 in Oregon?

18 A. That's correct, yes.

19 Q. When did that take place?

20 A. I think that was March of 2001.

21 Q. Nine months later, roughly?

22 A. Seven months, nine months, something like that.

23 Q. Now, had you been involved in discussions relating to  
24 poplar trees before that action?

25 A. Yes.

1 Q. Can you tell us about that.

2 A. Well, Daniel McGowan had a big interest in the subject. I  
3 believe that he had talked about it during the WTO protest.  
4 And then afterwards, when they were sort of talking about  
5 genetic engineering at these meetings and other places, he was  
6 very interested in this. I don't know, it sort of became a  
7 focus of research.

8 Q. Do you know why he was interested in poplar trees?

9 A. Well, it was the first non-crop plant that was being  
10 genetically engineered that we knew of, fiber plant.

11 Q. Did you get involved in doing any research relating to  
12 poplar trees?

13 A. I eventually did. I did research on, I believe a man  
14 named Steven Strauss at Oregon State University, who was doing  
15 genetically-engineered poplar research.

16 Q. Do you know whether Daniel McGowan was doing any research  
17 relating to poplar trees?

18 A. I believe he did, yes.

19 Q. Do you know what he was researching?

20 A. I think he researched the issue overall, and Steven  
21 Strauss and a professor at the University of Washington,  
22 Dr. Bradshaw.

23 MR. BLOOM: Excuse me, I don't object to that  
24 question, but I would ask that the hearsay kinds of questions  
25 be limited, please.

1           THE COURT: Well, identify them and I will rule on  
2 them.

3           MR. BLOOM: I don't want to get up and appear to  
4 obstruct. I just would ask that Mr. Friedman be cautious.  
5 Thank you.

6           THE COURT: Questions.

7 BY MR. FRIEDMAN:

8 Q. You said you were researching a man named Professor  
9 Strauss at Oregon State University.

10 Where is Oregon State University?

11 A. Corvallis, Oregon.

12 Q. At some point, did you learn about particular poplar trees  
13 or crops of poplar trees?

14 A. Yes, I found two different fields, trials where  
15 genetically-engineered poplar trees were being grown.

16 Q. Where were those?

17 A. One was at an arboretum research forest associated with  
18 the University, and another was some other University land by  
19 the river, by the Willamette River outside of Corvallis.

20 Q. To be clear, when you say "University" what are you  
21 talking about?

22 A. Oregon State University.

23 Q. What happened once you -- and this is Professor Strauss'  
24 research, not Professor Bradshaw's?

25 A. That's correct.

1 Q. What happened once you learned about these two crops of  
2 poplar trees?

3 A. Well, we were sort of working on an action at the site to  
4 destroy the trees and the research; they were the same thing.  
5 And we were moving very slowly on it, and some other people  
6 got involved and pushed us to work on it more quickly and to  
7 do the action. They wanted to do it in early March 2001, and  
8 I said we weren't ready and we waited until later that month,  
9 I believe. Then we went to the site and destroyed the trees,  
10 or tried to destroy the trees.

11 Q. How did you destroy or try to destroy the trees?

12 A. By girdling them or making a break in the bark so that  
13 nutrients couldn't flow through the tree.

14 Q. Would you take a look at Exhibit 292-C which should be in  
15 a folder in front of you.

16 A. Yes.

17 Q. Do you recognize that?

18 A. I think it's a tree there at one of the sites.

19 MR. FRIEDMAN: The Government offers 292-C.

20 MR. BLOOM: No objection.

21 THE COURT: Admitted.

22 (Exhibit No. 292-C admitted.)

23 BY MR. FRIEDMAN:

24 Q. Can you explain what's been done to that tree.

25 A. Someone has taken a chisel and rubbed it up the side of

1 the tree to make a break in the cambium of the tree.

2 Q. When you say cambium, what do you mean by cambium?

3 A. I think that's the layer under the bark that transfers  
4 water.

5 Q. What's the effect on a tree when you do that?

6 A. The tree would die.

7 Q. You used the word "girdling" a moment ago. Was there  
8 another term by which you also referred to this?

9 A. There was, but I don't remember what it is right now. I  
10 am sorry.

11 Q. Now, you said there were two plots of trees that were  
12 involved in this action. Were you at both of those sites?

13 A. No. I went one night with a small group of people to one  
14 site, and we were not there very long, and I thought I saw  
15 headlights and I called off the action.

16 There was another group of people at the other site, but  
17 there was a radio relay in between the two. When I called off  
18 the action, we both left both sites, is my understanding.

19 Q. Let me stop you for a moment. Who was with your team that  
20 night?

21 A. Daniel McGowan, Nathan Block, another person, and Stan  
22 Meyerhoff drove.

23 Q. Do you know who was on the other team that night?

24 A. I don't know for sure who was there.

25 Q. Do you know for sure any of the people who were there?

1   **A.** I think the radio relay was Chelsea Gerlach, and I believe  
2   that a woman named Vernell Lundberg or String was at the other  
3   site.

4   **Q.** How many trees do you think you destroyed at the site at  
5   which you were before you called off the action the first  
6   night?

7   **A.** All of us or me individually?

8   **Q.** All of you together.

9   **A.** Not very many at all. I didn't have a very good  
10   temperament for this sort of thing. I was sort of nervous.

11   **Q.** When you say "not many," can you give us a ballpark?

12   **A.** Thirty or less.

13   **Q.** Do you know how many trees were there?

14   **A.** Hundreds.

15   **Q.** Did you subsequently learn what happened to those trees?

16   **A.** People went back another night, and I didn't know it until  
17   they came to me with the communiqué. I believe it was  
18   Vernell, Spring, that came to me with a communiqué. And I  
19   read the communiqué, and it indicated that the properties had  
20   been destroyed or the trees had all been destroyed, and I  
21   said, what's this about? She said, we went back without you.  
22   So I found out that they had gone back.

23   **Q.** Would you take a look at a document in this folder,  
24   Exhibit 293.

25       Do you recognize that?



1   **A.** I believe this is the communiqué that was sent after that  
2 second action, the complete action.

3               MR. FRIEDMAN: Government offers 293.

4               MR. BLOOM: No objection.

5               THE COURT: Admitted.

6                               (Exhibit No. 293 admitted.)

7 BY MR. FRIEDMAN:

8   **Q.** I am going to ask you to read this to the jury.

9   **A.** The whole thing?

10   **Q.** Yes, thank you.

11   **A.** It says, "Open letter to Steve Strauss, Oregon State  
12 University forestry professor and founder of the Tree Genetic  
13 Engineering Research Cooperative:

14       Dear Steve, during mid-March, three of your genetically  
15 engineered tree research sites were visited by night. The  
16 test plots of Populus genus trees (poplars and cottonwoods) at  
17 these places were independently assessed and found to be a  
18 dangerous experiment of unknown genetic consequences.

19       Therefore, we ringbarked or cut down 90 percent of your  
20 trees at OSU's site at the Peavey Arboretum on Arboretum Road  
21 (off Highway 99 north of Corvallis, Oregon). At OSU's tract  
22 near Half Moon Bend of the Willamette River (just south of  
23 Garden Avenue off Highway 20 between Corvallis and Albany), we  
24 eliminated 60 percent of the trees. Lastly, every tree was  
25 cut down in one test plot at OSU's Agricultural Experiment

1 Station in Klamath Falls, Oregon (on Washburn Way, across from  
2 the Kingsley Field). In all, over 1200 of your GE research  
3 trees were destroyed.

4 "Some of the trees we targeted may have been hybrids and  
5 not technically GE. However, your Tree Genetic Engineering  
6 Research Cooperative (TGERC) focuses on hybrid poplars as its  
7 method for delivering modified genes into its frankentrees.  
8 All of the program's research on the Populus genus is used for  
9 the goal of patenting and commercializing GE trees.

10 "Steve, your exploits with TGERC are socially and  
11 environmentally unacceptable. You claim to be undertaking  
12 basic independent studies to address environmental concerns,  
13 but that claim is belied by the millions of dollars your  
14 program receives from huge timber corporations to develop fast  
15 growing supertrees for them.

16 "The expansion of GE from agriculture to industrial  
17 resource extraction, as with trees for timber production,  
18 exhibits the slippery slope of biotechnology permeating every  
19 part of human interaction with the rest of our natural world.

20 "In 1999, people used similar methods as we have to attack  
21 an AstraZeneca GE tree research site in England. AstraZeneca  
22 said the incident seriously affected its eight-year research  
23 program and the company decided to end it soon after the  
24 incident.

25 "Our goal is to do to TGERC what other did to

1 AstraZeneca's program. You may recall your thoughts about the  
2 event: 'These environmental extremists are unfortunately  
3 making us very paranoid,' said Steve Strauss, forestry  
4 professor at Oregon State University (Reuters News Service  
5 feature article, 'Eco-Warriors Stunt U.S. Biotech Tree  
6 Research,' March 2, 2000).

7 "Well, Steve, as the saying goes, just because you're  
8 paranoid, it doesn't mean that we're not out to get your  
9 research.

10 Very truly yours, concerned OSU students and alumni."  
11 Then it has some contact information associated with the  
12 e-mail.

13 Q. That's fine. Thank you.

14 Now, this action took place in March 2001, you said?

15 A. Yes.

16 Q. Do you recall being approached at a bar in Oregon a couple  
17 months later in May of 2001?

18 A. Yeah.

19 Q. If I said 2000, I meant 2001. Do you recall being  
20 approached in May of 2001?

21 A. In May of 2001, I met Stan Meyerhoff and Chelsea Gerlach  
22 at a bar, and it was clear that they wanted to ask me  
23 something. They conversed for a couple minutes in French,  
24 which I don't understand, and seemingly agreed to ask me this  
25 question, and they asked me if I would be involved in an

1 action.

2 Q. What did you say when they asked you?

3 A. I said yes.

4 Q. Did they give you any details about the action?

5 A. I don't believe I knew anything about it at that point. I  
6 think I was only told that I would need to go north with Stan  
7 that weekend.

8 Q. Do you recall when it was that they approached you?

9 A. It was approximately 10 days before the arson.

10 Q. Do you recall when during the week it was?

11 A. It was Thursday night.

12 Q. Do you remember when the action took place?

13 A. Very late Sunday night, Monday morning of May 21, 2001.

14 Q. So back 10 days before that on a Thursday, when would that  
15 have been?

16 A. May 10th, May 11th.

17 Q. Now, we have talked a few times about Stan Meyerhoff. Had  
18 he and Chelsea Gerlach been involved in a relationship at any  
19 point?

20 A. I think they had been boyfriend and girlfriend since high  
21 school.

22 Q. Were they still dating or involved at this stage?

23 A. It was back and forth. I think they were at the end of  
24 their relationship at that point.

25 Q. Did you have any relationship with Stan Meyerhoff?

1   **A.** I knew them both as friends at that point, and Stan and I  
2   were starting to develop a flirtatious relationship.

3   **Q.** At roughly this point in time?

4   **A.** Yes.

5   **Q.** Are you still in a relationship with Stan Meyerhoff?

6   **A.** Yes.

7   **Q.** Are you engaged to him?

8   **A.** Yes, I am.

9   **Q.** So they told you that you would need to go north with Stan  
10   Meyerhoff. Did that happen?

11   **A.** Yes. That weekend, I drove north in Stan's car with Stan  
12   and Suzanne and Daniel McGowan. I have a clear memory of  
13   sitting in the car listening to --

14               MR. BLOOM: I am sorry, I am having trouble hearing  
15   you.

16   **A.** I have a clear memory of sitting in the car listening to  
17   an Elastica song, and Daniel making fun of the way Stan was  
18   dancing to the song.

19   BY MR. FRIEDMAN:

20   **Q.** If your voice drops -- these mikes are great, but if you  
21   could pull the mike in close to you.

22               You said you went north. Where did you go?

23   **A.** Olympia.

24   **Q.** Where specifically in Olympia did you go?

25   **A.** The vehicle of people dropped me off at a Denny's

1 restaurant, just off the highway in Olympia.

2 Q. Did any of them stay with you?

3 A. Stan was there for a minute. I think he got out of the  
4 car and talked to the people who were there, and then he got  
5 in the car and left, and I was the only one who stayed.

6 Q. You said the people who were there. Who were the people  
7 who were there at the restaurant?

8 A. Briana Waters was there. Justin Solondz was there.  
9 Avalon or Bill Rodgers, myself and I think that Jen Kolar  
10 might have come once we were inside the restaurant.

11 Q. Let me ask you to look at Exhibit 101-A. That should be in  
12 a folder in front of you.

13 A. Uh-huh.

14 MR. FRIEDMAN: We'd like to offer this or use it for  
15 illustrative purposes at this stage.

16 MR. BLOOM: No objection -- excuse me, I am going to  
17 withdraw that. I am going to objection to that. It's really  
18 suggestive as presented.

19 MR. FRIEDMAN: This will help the witness a great  
20 deal in explaining her testimony.

21 THE COURT: It might, but before you publish it, let  
22 her look at it and see if there's a question.

23 BY MR. FRIEDMAN:

24 Q. Do you recognize the people pictured on that exhibit?

25 A. Yes.

1 Q. Are they all involved in the events -- are most of those  
2 people involved in the events about which we are talking?

3 A. You mean the University of Washington arson?

4 Q. Well, this meeting and the car ride that we talked about  
5 and that?

6 A. Yes.

7 Q. Would it help you in discussing and explaining who's where  
8 to use that exhibit?

9 A. Yes.

10 Q. Thank you.

11 MR. BLOOM: My problem is that there are individual  
12 pictures of all the people that are available. Grouping them  
13 together like this is a suggestion.

14 THE COURT: It might be. Identify the ones that were  
15 there and those are the ones you can display. Ones that you  
16 can identify on this photograph as being there at that  
17 restaurant in Olympia.

18 Ask her to identify them by name and then cover the rest  
19 of them up.

20 BY MR. FRIEDMAN:

21 Q. We will need to use the document camera to do that, if  
22 that's okay.

23 Could you tell us the name of the five people at the  
24 restaurant.

25 A. Justin Solondz. Briana Waters. Myself. William Rodgers.

1 And I believe Jen Kolar came once we were there.

2 MR. BLOOM: May the record reflect that as I looked  
3 at the witness, she was reading from something or looking at  
4 something as she spoke.

5 THE COURT: You can ask her about that, if she's  
6 looking at something.

7 MR. BLOOM: I want the record to reflect that,  
8 because there was silence as she was doing that.

9 THE COURT: I think it's reflected that.

10 MR. BLOOM: Thank you.

11 BY MR. FRIEDMAN:

12 Q. Who were the other individuals whom you had driven up from  
13 Eugene to Olympia?

14 A. Suzanne Savoie, Stan Meyerhoff and Daniel McGowan.

15 Q. So, who -- can you relate those to the individuals  
16 pictured in the top and bottom row of this chart?

17 A. Suzanne Savoie, Daniel McGowan and Stan Meyerhoff who I  
18 drove with are in the bottom row.

19 The people who were at the restaurant for a period of time  
20 are in the top row.

21 Q. Now, had you known all of the people who were in the  
22 restaurant before, or was this the first time you met any of  
23 them?

24 A. I believe that was the first time I had seen Briana Waters.

25 Q. Do you see Ms. Waters in the courtroom today?



1 **A.** Yes. She's wearing pink and wearing glasses.

2 **Q.** At the defense table?

3 **A.** Yes.

4 MR. FRIEDMAN: May the record reflect the witness has  
5 identified the Defendant.

6 THE COURT: It will.

7 BY MR. FRIEDMAN:

8 **Q.** Do you recall what was discussed at the restaurant?

9 **A.** Well, it was clear that we were going to undertake an  
10 action together. I don't think that an explicit plan was laid  
11 out to me, but because I was unfamiliar with Briana, I think  
12 that Mr. Rodgers, Avalon, sort of vouched for her and vouched  
13 for me as being people that he had worked with and trusted.

14 **Q.** At any point, did you become uncomfortable with the  
15 conversation that took place at the restaurant?

16 **A.** Well, the other things I remember that happened is we  
17 first sat in the back of the restaurant. I think Briana and I  
18 sort of headed there, and Avalon didn't want us to be off in  
19 the corner by ourselves, so he pulled us to the front of the  
20 restaurant. There was some explicit conversation, and I was  
21 uncomfortable with the fact that they were having an explicit  
22 conversation about an action, and I think I said something to  
23 that effect.

24 **Q.** Over the course of the weekend, did you meet in other  
25 places with the people in the top row here, these five people?

1   **A.**   Yes.

2   **Q.**   Where else did you have meetings over the course of that  
3   weekend?

4   **A.**   Well, the next thing that I remember is the next morning,  
5   I went for a run at a house that I remember being near  
6   Briana's. I went for a run at a track that I remember being  
7   what I thought was Briana's house. I came back to the house,  
8   and I think she was playing violin in the kitchen maybe. I  
9   think she stopped when I got there. I went in the house for a  
10  minute, and then I also have a clear memory then of being in  
11  an outbuilding behind the house.

12  **Q.**   Would you take a look at a document marked as Exhibit 733  
13  in a folder in front of you.

14       Can you tell us in general terms what that is?

15  **A.**   I believe that's the house where we were.

16  **Q.**   Is it --

17  **A.**   It's a house.

18  **Q.**   Is the document one page or more pages than that?

19  **A.**   It's two pictures. It's three pictures of that house.

20       MR. FRIEDMAN: The Government offers Exhibit 733.

21       MR. BLOOM: No objection.

22       THE COURT: Admitted.

23                       (Exhibit No. 733 admitted.)

24       MR. FRIEDMAN: May we publish the first page to the  
25  jury?

1 BY MR. FRIEDMAN:

2 Q. This is the house you understood was the house in which  
3 the Defendant was living?

4 A. I think this is the house where we met that weekend, and I  
5 understood that she lived there, yes.

6 Q. Do you know why you were running or jogging on a track  
7 near that house?

8 A. Because I was getting exercise.

9 Q. Is there any reason you were near that house in  
10 particular? Do you know where you stayed the night before?

11 A. I think I may have stayed in that house, but I am not  
12 sure.

13 Q. When you came back, what happened? When you came back  
14 from the jog.

15 A. Well, what I just described of Briana being in the kitchen  
16 practicing, and eventually I believe we went out to the  
17 outbuilding.

18 Q. Would you look at the third page of that exhibit. Can you  
19 describe for us what that shows?

20 A. I believe this is the backyard of that house and the  
21 outbuilding.

22 Q. If you touch your screen, you should be able to indicate  
23 what it is you are referring to as the outbuilding.

24 A. This building here.

25 Q. The red building with the white roof?

1   **A.**   Yes.

2   **Q.**   Now, you said you went out to the outbuilding.   Who went  
3   out to the outbuilding?

4   **A.**   I remember being in that building with Briana, Justin and  
5   I believe Avalon was there.

6   **Q.**   Do you remember what was discussed when you went out to  
7   the outbuilding?

8   **A.**   At this point, I must have known what was going to happen  
9   because Justin was talking about the incendiary devices and  
10   some improvement in the design that he had made which involved  
11   using bags from water bladders, like you would use if you were  
12   running or something, instead of what had been used before,  
13   which I believe was buckets.

14       So we talked about that.   We talked about where he had  
15   gotten them.   I believe he dumpster-dived them, which means he  
16   took them out of a dumpster from a business in the area.   We  
17   talked about the bags the devices would be in eventually while  
18   we were in that space.

19   **Q.**   Was the defendant present for all of that conversation?

20   **A.**   I believe so.

21   **Q.**   Do you recall any other meetings that took place later  
22   that day or later that weekend?

23   **A.**   I remember being in a field talking with those same  
24   people, including Avalon and Jen Kolar, and we were having a  
25   discussion --

1 Q. Can I slow you down for a moment.

2 So how many of you were there in this field?

3 A. Five.

4 Q. Can you tell us all five names, just to be clear.

5 A. Myself, Jen Kolar, Avalon, Briana Waters and Justin  
6 Solondz.

7 Q. How did that meeting begin?

8 A. I don't remember how it began. What I remember clearly  
9 happening at that meeting was Jen Kolar outlining to us how  
10 she intended to break the windows of this building. She had  
11 some special technique that she had developed using glass  
12 cutting tools or stained glass cutting tools or something.  
13 She gave us a very detailed explanation of that. I remember  
14 --

15 Q. Before you move on, do you remember anything about this  
16 special technique or what the goal was of the technique?

17 A. It was supposed to be quieter than just smashing a window.  
18 I had the impression it would be soundless.

19 Then I remember also while we were in that field that we  
20 talked about -- we had a conversation about the claim of  
21 responsibility or communiqué that would happen. One point of  
22 contention was that I did not want to use the name Earth  
23 Liberation Front in the communiqué because even to that point,  
24 I didn't really realize that these people I was working with,  
25 you know, self-identified as Earth Liberation Front.

1 Q. Do you remember what position other people took on that  
2 issue?

3 A. Everyone else thought it was absurd, I think. I remember  
4 kind of hoping that Briana would back me in not using the name  
5 ELF, and she didn't.

6 Q. Do you remember any discussion that took place in the  
7 field about what would happen if you were discovered or  
8 caught?

9 A. We all sort of made a commitment. This was, I think,  
10 standard, but I think I asked to do this, that we made a  
11 commitment that if we were ever caught, we wouldn't roll on  
12 each other or cooperate against each other.

13 Q. Do you recall meeting with this group anywhere else that  
14 same weekend?

15 A. I believe it was also that weekend that we met in a  
16 building at the Evergreen campus.

17 Q. What was discussed at that meeting?

18 A. At that meeting, it seems like it was closer to the actual  
19 arson because finer details were being discussed, and I  
20 remember that there was conversation about how much fuel to  
21 use, and I think that Jen Kolar was advocating using less  
22 fuel. She seemed to have knowledge of what else was in the  
23 building, and Avalon was wanting to use more fuel.

24 Q. Did he say why he wanted to use more fuel?

25 A. I think he wanted to use more fuel because he was

1 concerned that there were a number of fire stations in the  
2 immediate area, and he wanted to make sure that more than the  
3 fire going out would -- you know, the sprinklers coming on and  
4 putting the fire out wouldn't not happen.

5 Q. Do you recall which of the two views prevailed? More fuel  
6 or less fuel?

7 A. I think Avalon prevailed.

8 Q. You told us about several different meetings of this group  
9 over this weekend, and you talked a moment ago about the  
10 agreeing not to testify during one of those, or not to  
11 cooperate against each other?

12 A. That's correct.

13 Q. Is that one of the things that makes it hard for you to  
14 testify today?

15 A. It's hard for a lot of reasons.

16 Q. What happened at the end of the weekend?

17 A. At the very end?

18 Q. Where did you go after the weekend?

19 A. At the end of that weekend, we drove back -- I drove back  
20 in the car with the same people I had driven up with, back to  
21 Eugene.

22 Q. During the various meetings, had there been talk about  
23 what each person's responsibilities would be during the coming  
24 week to prepare for this action?

25 A. Yes.

1 Q. What responsibilities did you have?

2 A. My responsibility was to secure black clothes for myself  
3 and nothing else.

4 MR. BLOOM: I am sorry, a little louder.

5 A. My responsibility was to get black clothes, and I remember  
6 that Briana was kind of in charge of renting the car or  
7 securing the vehicle.

8 BY MR. FRIEDMAN:

9 Q. Before I get to that, you said dark clothing. Was there  
10 any difference in the clothing that you were supposed to get,  
11 or each person was supposed to get, for this arson as opposed  
12 to other actions in which you'd been involved?

13 A. Not in any technical way, except we all felt it was more  
14 important to have clothing unassociated with us.

15 Q. For instance, did you wear -- were you supposed to get a  
16 hat or stocking cap or anything like that?

17 A. I don't remember in particular if we had a stocking cap.  
18 I think there might have been discussion that it was better to  
19 get dark clothing. We didn't want to look like we were  
20 prowlers or something walking around. So maybe have a dark  
21 brown sweater or a blue sweater instead of something that  
22 could be unzipped and would be less than black.

23 Q. Did the fact that the Center for Urban Horticulture is in  
24 the middle of a city have any impact on the clothes that you  
25 were going to get?



1   **A.** I think it did.

2   **Q.** Can you tell us what that was.

3   **A.** Well, I think we wanted to be able to pass as something  
4 other than burglars walking around the city.

5   **Q.** Now, you mentioned getting a car a moment ago. Can you  
6 tell us about that?

7   **A.** Well, generally for all of these actions, it was  
8 preferable to have a car that wasn't associated or didn't have  
9 license plates that were registered to any of us. So this was  
10 kind of a big issue in any of these criminal activities, was  
11 how we were going to secure a car that wasn't associated with  
12 us. It was often the linchpin on whether or not the action  
13 happened.

14   **Q.** What was the plan for this action?

15   **A.** Briana was supposed to secure a car. I remember I was a  
16 little concerned when I found out she was renting it or that  
17 people were talking about renting a car because generally it  
18 was not seen as preferable to rent.

19   **Q.** Did you understand whether she was going to rent the car  
20 herself?

21   **A.** Well, I asked about that. I asked, why are we renting  
22 this car? Won't there be rental records? Whose credit card  
23 is being used? It was explained to me that someone she  
24 trusted was actually going to rent the car, and over the  
25 course of this period of time, I came to understand that it

1 was someone who had a somewhat familial relationship with her,  
2 like an older aunt type person is what I thought.

3 Q. Did you understand that it was definitely a family  
4 relationship or someone whom she considered like an aunt?

5 A. Someone she considered like an aunt; a distant,  
6 untraceable relative is what I was led to believe.

7 Q. Did you have any understanding as to whether the person  
8 who rented the car was going to know for what it was going to  
9 be used?

10 A. No. I thought the person would not understand what the  
11 car was going to be used for.

12 Q. Why did you think that?

13 A. Well, anyone who understood what the car was going to be  
14 used for would be implicated in the crime, so they needed to  
15 not know what it was going to be used for.

16 Q. Do you remember any explicit discussion of what the person  
17 would be told?

18 A. It was my understanding that this person was going to be  
19 told that Briana and her boyfriend were having problems and  
20 she needed to get away from things.

21 Q. Why was that your understanding? Where did you learn  
22 that?

23 A. From conversations with that group of people.

24 Q. So we've talked about what you were doing, what the  
25 Defendant was going to do that week.

1 Did Justin Solondz have any particular responsibilities?

2 A. I understood that he was supposed to make the incendiary  
3 devices.

4 Q. Do you know if he was supposed to make those alone or if  
5 anyone else was participating?

6 A. Well, I imagine that Avalon helped him.

7 MR. BLOOM: Objection.

8 THE COURT: Sustained.

9 MR. BLOOM: That she imagined.

10 THE COURT: Sustained.

11 MR. BLOOM: I am sorry, I didn't hear you.

12 BY MR. FRIEDMAN:

13 Q. You heard or understood that Justin Solondz was supposed  
14 to make the incendiary bombs, incendiary devices?

15 A. Yes.

16 Q. At some point -- at the end of the week, what happened?  
17 What did you do next?

18 A. At the end of that week, I drove back to Olympia from  
19 Eugene with the same group of people.

20 Q. Which people is that?

21 A. The people I had driven with the previous weekend, Suzanne  
22 Savoi e, Daniel McGowan, Stan Meyerhoff. I have a pretty clear  
23 memory of being at the rest station with them.

24 Q. On the road somewhere between Eugene and Olympia?

25 A. A particular one, yeah.

1 Q. Do you recall anything that happened while you were in  
2 Olympia that second weekend? Let me ask you this: Do you  
3 recall where you slept that weekend?

4 A. I think after the crime, that I might have stayed at  
5 Nathan and Joy's house. I think that might be the only time I  
6 stayed over -- that was for a matter of hours after the crime,  
7 but I remember being in that outbuilding one other time that I  
8 haven't talked about.

9 Q. Was that this second weekend?

10 A. I think that it was the second weekend.

11 Q. Let me ask you a couple more questions before we dive into  
12 that. This is the outbuilding at the house at which Briana  
13 Waters was living?

14 A. Yes.

15 Q. Did you connect anyone else in your mind with that house?  
16 Was anyone else living there?

17 A. I understood that there was a person named Ocean who was  
18 in a wheelchair that lived there as well.

19 Q. Was he around that weekend?

20 A. I am sorry, I am thinking -- I also understood that there  
21 was his girlfriend with red hair who was maybe someone I knew  
22 was in and out. I don't remember what her name is.

23 Q. Do you recall seeing any of them that weekend?

24 A. No.

25 Q. What do you recall about being at Briana Waters' house

1 that second weekend?

2 **A.** I remember being in the outbuilding, and I don't know if  
3 this was new that weekend or it had been there before, but  
4 there was a bit sectioned off from the rest of the building,  
5 and it was a clean room where the destructive devices were  
6 being built.

7 **Q.** You used the term "clean room." What do you mean by clean  
8 room?

9 **A.** Well, it was free of genetic material and fingerprints  
10 associated with the house or with the people who were working  
11 on them.

12 **Q.** How do you create a room free of genetic material?

13 **A.** I think it was like painting plastic on the side of the  
14 space. I am not sure if it was -- the two-by-four structure  
15 was actually there for it, but there was plastic over the  
16 sides, and it was plastic on the inside as well.

17 **Q.** When you say sectioned off, you mean sectioned off by the  
18 plastic on all sides?

19 **A.** Yes.

20 **Q.** Did you ever go into the clean room?

21 **A.** Uh- huh. I was made to understand that we needed to help  
22 with the destructive devices, and I believe that at one point  
23 Briana and I went into that room, and we were supposed to help  
24 build the devices. My feeling was that it was a method of  
25 getting our hands dirty so that we were as implicated as other

1 people were in the crime, and while they kind of built it up  
2 that we were going to have to work on the devices, actually  
3 what happened when we went in there was, we looked at them. I  
4 don't remember interacting with them or touching them at all.

5 Q. Who took you in there?

6 A. I think that Justin did, but I am not sure. Justin or  
7 Avalon.

8 Q. Now, going into a clean room, did you take any special  
9 precautions? Did you do anything to keep it clean?

10 A. I think that we put on the sort of cloth -- I am not sure  
11 if they were painters outfits or fiber sort of suits. I think  
12 we would have had -- we would have had -- we did have gloves  
13 on and probably something to cover our hair as well.

14 Q. Did you see -- what did you -- apart from the room itself,  
15 what did you see while you were in there?

16 A. I saw the devices or a device that was being worked on.

17 Q. Do you recall the details of what the device looked like?

18 A. Uh-huh. It was sort of an alarm clock with wires sticking  
19 out of it at strange places, and it was nestled in Tupperware  
20 that was like a sandwich-sized Tupperware that was blue, I  
21 think.

22 Q. Did you see any other components or parts to the device?

23 A. There might have been a second device there, but I don't  
24 remember for sure.

25 Q. Did you see any larger containers that would hold fuel or

1 anything like that?

2 **A.** Not in the clean room. At some point, I was shown how the  
3 bags that would have the components in were to be packed, and  
4 there were these oversized Tupperwares to put the fuel in, and  
5 then my understanding was that they were going to be put in a  
6 garbage bag and then they were in these green Army bags.

7 **Q.** Okay. Would you take a look at Exhibit 330-B. It's  
8 actually not a document. It's probably to your left.

9 **A.** In this stack?

10 **Q.** No, it's not a document, it's a container of some sort.  
11 We can come back to this.

12 Now, at some point did you leave Olympia?

13 **A.** Yes.

14 **Q.** When did that happen?

15 **A.** The morning after we left, the morning after the crime,  
16 Monday morning.

17 **Q.** I am sorry. Before the crime, did you leave Olympia?

18 **A.** At some point, we went to Seattle.

19 **Q.** Do you recall roughly when that was?

20 **A.** In the evening.

21 **Q.** The evening before the arson?

22 **A.** Of the arson.

23 **Q.** The evening that becomes the night or the morning of the  
24 arson?

25 **A.** Yes.

1 Q. You told us the arson was in the early morning hours of  
2 Monday, May 21st so --

3 A. It would have been Sunday.

4 Q. The 20th?

5 A. Uh-huh.

6 Q. Let me ask you to take a look at Exhibit 330-B which has  
7 already been introduced into evidence.

8 Does that look familiar to you?

9 A. Yes.

10 Q. Can you tell us why?

11 A. It looks just like the Tupperware that was used to hold  
12 the fuel.

13 Q. Now, you said on Sunday night you drove up from Olympia to  
14 Seattle. Where did you go when you got to Seattle?

15 A. We went to a bar.

16 Q. Would you take a look at Exhibit 304-A which should be in  
17 a folder in front of you.

18 A. Okay.

19 Q. Do you recognize this?

20 A. I believe this is the bar.

21 MR. FRIEDMAN: The Government offers 304-A.

22 MR. BLOOM: No objection.

23 THE COURT: Admitted.

24 (Exhibit No. 304-A admitted.)

25 BY MR. FRIEDMAN:



1 Q. The Greenlake Bar & Grill?

2 A. Uh-huh. How do I clear this?

3 Q. At the very bottom left corner, there should be something  
4 that says "exit."

5 Who was at that bar?

6 A. Jen Kolar, Avalon, myself, Justin Solondz and Briana  
7 Waters.

8 Q. For how long do you think you all were at the bar?

9 A. An hour or two.

10 MR. BLOOM: Could you say that again?

11 A. An hour or two.

12 BY MR. FRIEDMAN:

13 Q. Did you eat or drink there?

14 A. I think I ate a salad.

15 Q. What do you recall after you left the bar?

16 A. The next thing I remember after we left the bar is getting  
17 out of the car.

18 Q. Did you drive somewhere?

19 A. We drove to the University of Washington, very near the  
20 Center for Urban Horticulture.

21 Q. Can I ask you to lean in a little?

22 A. I am really sorry. It's loud to me up here.

23 Q. You drove near the University of Washington. Would you  
24 take a look at Exhibit 303. This has already been admitted  
25 into evidence, so it should show up on your screen.

1 That's a map of an area near the Center for Urban  
2 Horticulture. Have you looked at that map before?

3 | **A.** Yes.

4 **Q.** Using that map, can you tell us where you drove?

5 | **A.** I believe that we drove to Northeast 42nd Street. Is that  
6 | what that says? 42nd Street?

7 | **Q.** Can you mark on the map where that is.

8 **A.** Just by touching it? I think we drove to about there.

9 | **g.** What happened when you got there?

10 **A.** We were dropped off and we got out of the car.

11 **q.** Whom do you recall getting out of the car?

12 **A.** I don't really have a very clear memory of who got out of  
13 the car.

14 **Q.** What did you do after you got out of the car?

15 **A.** I remember walking across I believe what's a field right  
16 here. Right there.

17 Q. Let me slow you a little bit. Would you take a look at  
18 Exhibit 304-C which is in a folder in front of you.

19 | **A.** Yes.

20 | **Q.** Do you recognize that?

21 **A.** I recognize the end of the street there.

22 MR. FRIEDMAN: The Government offers Exhibit 304-C.

23 MR. BLOOM: No objection.

24 THE COURT: Admitted.

25 (Exhibit No. 304-C admitted.)

1 BY MR. FRIEDMAN:

2 Q. Can you tell us what that shows?

3 A. That shows the street where we were dropped off and a sort  
4 of little gate that we passed through to get down to the  
5 building. Can I back up?

6 Q. Sure.

7 A. I just want to say, I don't have a clear memory of how  
8 this happened, but one thing that I believe happened was at  
9 some point during that evening, I am not sure when, some  
10 people went -- and I believe it was Justin -- sort of  
11 pre-positioned the backpack, so we didn't have the backpack  
12 with us at the point we got out of the car.

13 Q. Do you recall whether you were carrying anything when you  
14 got out of the car?

15 MR. BLOOM: Excuse me, I would ask you to repeat that  
16 or have it read back.

17 THE COURT: Do you want her to repeat it or her to  
18 read it back?

19 MR. FRIEDMAN: I am happy to repeat it.

20 BY MR. FRIEDMAN:

21 Q. Do you recall whether you were carrying anything when you  
22 got out of the car?

23 A. I don't remember if we were carrying anything.

24 Q. You don't recall carrying anything?

25 A. Not at the point when we got out of the car.

1 Q. Would you take a look at Exhibit 304-D.

2 Do you recognize that?

3 A. That's the sort of gate we passed through.

4 Q. Let me ask you to look at Exhibit 304-E also.

5 A. That's the gate and a bush.

6 MR. FRIEDMAN: Government offers Exhibits 304-D and  
7 E.

8 MR. BLOOM: No objection.

9 THE COURT: Admitted.

10 (Exhibit Nos. 304-D and 304-E admitted.)

11 BY MR. FRIEDMAN:

12 Q. How does this picture relate to the picture we were  
13 looking at a moment ago, the view down 42nd Street?

14 A. That's the end of the street.

15 Q. Going to 304-E?

16 A. That's the gate -- that's the hole in the gate that we  
17 passed through.

18 Q. Can we go back to Exhibit 303 for a moment. So where on  
19 this map is the photograph of the gate we just looked at?

20 A. The gate is there.

21 Q. Then would you take a look at Exhibit 304-G for a moment.  
22 Tell us if you recognize that.

23 A. Yes, I recognize that.

24 Q. I am sorry, I led you out of order for a moment.

25 Exhibit 304-F, can you tell us if you recognize that?

1   **A.**   Exhi bi t 304-F is a picture from the other di recti on of the  
2   bush and the gate.

3               MR. FRI EDMAN:   Government offers Exhi bi t 304-F.

4               MR. BLOOM:   No ob jecti on.

5               THE COURT:   Admi tted.

6                               (Exhi bi t No. 304-F admi tted.)

7   BY MR. FRI EDMAN:

8   **Q.**   So where in that picture is the gate that we j ust l ooked  
9   at?

10   **A.**   This is the gate here and this is the opening.

11   **Q.**   Why is that bush signi ficant?

12   **A.**   I remember when we came back, after we had placed the  
13   incendi ary devices, that that's where Bri ana was the l ookout  
14   from.

15   **Q.**   When you were going down, did she stay there or did she --  
16   did she stay there as you were working down to the fire?

17   **A.**   I don't have a clear memory of her going -- how she got  
18   posi ti oned there.

19   **Q.**   But she was there when you came back?

20   **A.**   She was there when we came back.

21   **Q.**   Did she have any way of getting in touch wi th you?

22   **A.**   I think she had a radi o, and we had radi os.

23   **Q.**   Then 304-G, do you recognize that?

24   **A.**   That's the fi eld where the l ast photo was taken from that  
25   we wal ked across.

1 MR. FRIEDMAN: Government offers Exhibit 304-G.

2 MR. BLOOM: No objection.

3 THE COURT: Admitted.

4 (Exhibit No. 304-G admitted.)

5 BY MR. FRIEDMAN:

6 Q. Looking at that picture, can you tell us what that shows?

7 A. It shows this field, and one difference I notice from the  
8 time is that I don't remember there being a little gate at the  
9 far end of the field, of the little fence.

10 Q. There's a bush at the very left of this picture, what is  
11 that?

12 A. I believe that would be just a bit of the bush.

13 Q. The one we were just looking at?

14 A. Uh-huh.

15 Q. In the center of the picture, there's a large building  
16 right beyond the field. Do you know what that is?

17 A. I believe that's the Center for Urban Horticulture.

18 Q. Is it fair to say this is the view from that bush?

19 A. Yes, I think so.

20 Q. Did you have any understanding what Briana Waters'  
21 responsibilities were after the rest of you left here?

22 A. She was meant to notify us if there was security coming,  
23 or police, or if some sort of ruckus was raised by our  
24 presence.

25 Q. Let's go back to Exhibit 303. What happened after you

1 moved on from that bush? Where did you go?

2 **A.** We started here on the street where it drops off. We  
3 crossed the field. Then I don't really remember walking down  
4 all this way. It looks like a long way, but we walked down  
5 this strip here, down to sort of some industrial yard support  
6 facilities for the building.

7 **Q.** Let me stop you there for a second.

8 MR. BLOOM: Excuse me. Why stop there? I would like  
9 to hear the rest of the answer, please.

10 MR. FRIEDMAN: I was trying to avoid a narrative.

11 THE COURT: Go ahead, if you can finish in the  
12 narrative. I thought he wanted question and answer.

13 **A.** I believe -- my understanding was this road here that I  
14 just went down, that this is the road they had driven down  
15 earlier when they dropped off the bags, and the bags were  
16 hidden down here where the dumpsters were.

17 So there was some conversation at some point about we  
18 couldn't drive down that road so late at night, but it was  
19 okay for them to drive down that road earlier when they  
20 positioned the bags.

21 **Q.** Would you take a look at Exhibit 304-K and tell me if you  
22 recognize that.

23 **A.** Yes, it's the dumpsters in that sort of industrial field.

24 MR. FRIEDMAN: The Government offers Exhibit 304-K.

25 MR. BLOOM: No objection.

1 THE COURT: Admitted.

2 (Exhibit No. 304-K admitted.)

3 BY MR. FRIEDMAN:

4 Q. Do you recall what happened when you got to the dumpsters?

5 A. The bags were there. I remember we got the bags. Do you  
6 want me to continue?

7 Q. Well, with whom do you recall being there?

8 A. I remember being there for sure with Avalon.

9 Q. Would going back to the map help you show us where you  
10 went next?

11 A. Well, just looking at this photo, I would point out that  
12 we walked down this sort of trail beyond the yellow gate  
13 there. I remember sort of walking over to the right and then  
14 over on a footpath.

15 Q. So let's go back to Exhibit 303. Can you show us the  
16 trail beyond the yellow gate and where you walked?

17 A. I think this is the trail here, and then we came up here,  
18 and then there's a little bit of a marsh area type here. I am  
19 not sure if we cut across it. Then there's a lighted kiosk up  
20 here where I have circled.

21 Then we went over here to some knolls outside of the  
22 building. I think there was also a footpath here, and the  
23 knolls we are on were closer to the building than the  
24 footpath.

25 Q. Would you take a look at Exhibit 304-M and 304-N and tell



1 me if you recognize those.

2 **A.** 304-M and N?

3 **Q.** Yes.

4 **A.** Yes, I recognize both of those.

5 **Q.** What are they?

6 **A.** It's a view of the Center for Urban Horticulture Center  
7 from that wetland type area.

8 MR. FRIEDMAN: The Government offers 304-M and 304-N.

9 MR. BLOOM: No objection.

10 THE COURT: Admitted.

11 (Exhibit Nos. 304-M and 304-N admitted.)

12 BY MR. FRIEDMAN:

13 **Q.** So tell us what you see in 304-M.

14 **A.** That's the wetland, and then I can see the roof of the  
15 Urban Horticulture Center there off to the left.

16 **Q.** Halfway up the picture to the left-hand side?

17 **A.** Yes.

18 **Q.** And then 304-N?

19 **A.** That's the wetland, and I think you can see a little bit  
20 of the roof, sort of here.

21 **Q.** Is this the path by which you approached the Center for  
22 Urban Horticulture?

23 **A.** I don't remember if we walked through the wetland. I  
24 think we might have but --

25 **Q.** The direction from which you approached?

1   **A.** Oh, yeah.

2   **Q.** You said a moment ago that you came to a knoll just before  
3 the Center?

4   **A.** Uh-huh.

5   **Q.** Whom do you recall being at the knoll?

6   **A.** I have a clear memory of being crouched down there with  
7 Jennifer Kolar. I remember being there and looking around.  
8 It was the first time that I had been on the site, and I  
9 looked around to my left and there was some bike racks, and  
10 there was a bike in the bike rack, and I was worried about  
11 people being in the building because I had a very strong  
12 commitment not to hurt any people.

13       I remember turning to Jen and saying -- pointing to the  
14 bike and asking her, is there someone in the building? And  
15 she said no -- she indicated no. I think she just shook her  
16 head. My impression was that she had been there before and  
17 was familiar with the fact that it was an abandoned bike or  
18 something.

19   **Q.** Do you recall where Avalon, William Rodgers, was at this  
20 point?

21   **A.** I think that he was at the building checking to make sure  
22 there was no one inside.

23   **Q.** Did you see him do that?

24   **A.** I couldn't see the building. I think I may actually  
25 remember him, you know, sort of creeping up to the building.

1 Q. What did he do after he crept up to the building?

2 A. He came back to where I was, and he and I must have been  
3 there for a minute, and then Jen Kolar went up to the building  
4 and she used her technique to break the window.

5 Q. Did she know -- was she headed towards a particular  
6 window? Did she know where to go?

7 A. She knew where the office of the professor was.

8 Q. What happened when she tried to cut the glass in the  
9 window?

10 A. It was loud, like a window breaking.

11 Q. What did you do when that happened?

12 A. I just was sort of like, oh, gosh, that's loud. But I  
13 don't remember for sure where she went from that point. She  
14 might have come back to where Avalon and I were, and then  
15 Avalon and I went to the building. He went inside the  
16 building, and I handed him the bags I believe. He looked  
17 around the office for anything that might have been useful in  
18 our research on genetic engineering and checked, but there was  
19 nothing in there. And he came to me with some Tupperware and  
20 sort of indicated that I should take it out, and I said why,  
21 what is this? But we weren't talking very much. I opened the  
22 lid to the Tupperware, and I saw snake shapes, and I didn't  
23 really want to stick my hand in there to determine if it was  
24 snakes or snake skins. So I put the lid back on in a rush and  
25 moved those Tupperwares away from the building.

1 Q. At any point during this process, do you recall getting  
2 called on a radio?

3 A. I think that may have happened, but I kind of remember  
4 that while Jen and I were back by the knoll, she got a call on  
5 the radio and we held for a minute instead of proceeding.

6 Q. Did anything happen, or what happened next?

7 A. Whatever had caused the hold passed by without causing a  
8 problem.

9 Q. And you proceeded?

10 A. Uh-huh.

11 Q. So you said you had been given these containers with the  
12 snake skins and put them away from the building.

13 What did you do after that?

14 A. So Avalon was in the building. He set the devices, took  
15 the Tupperware out of the bags, set them around the room in  
16 places he decided would be a good idea.

17 MR. BLOOM: Excuse me, I object only because she was  
18 told this. I won't object on hearsay if that's the --

19 THE COURT: Let's see if we can find out.

20 BY MR. FRIEDMAN:

21 Q. Ms. Phillabaum, are you telling us what you saw that  
22 night? Did you see this, or were you told this?

23 A. Which part are you asking about?

24 Q. What you've just told us about, what Avalon, William  
25 Rodgers, was doing in the room. Is this what you saw?

1   **A.** I think he might have been sort of -- I couldn't really  
2 see much other than a generic office, but I think he might  
3 have been sort of narrating what was going on as it was going  
4 on.

5   **Q.** As it was going on at the time?

6   **A.** Yeah. So he was in the office. He looked for places to  
7 put the devices. I remember that one of them I think was on  
8 the window -- I think actually he was setting it there because  
9 he had to set the time. I remember seeing him inside the  
10 window and then he placed them around the office, came out of  
11 the building and we left.

12   **Q.** Then which direction did you leave?

13   **A.** We went back in a similar direction to the way we had  
14 come.

15   **Q.** Okay. Do you recall any of you making a call on one of  
16 your radios?

17   **A.** Not at that point. Could I look at the map again?

18   **Q.** Sure. That's Exhibit 303, please.

19   **A.** So we were over here somewhere. I think we went back this  
20 way (indicating).

21       At some point, someone called on the radio for a pick up.  
22 We crossed this field and --

23   **Q.** When you say called for a pick up, what do you mean by  
24 that?

25   **A.** I believe Justin was driving the car, and he was not

1 parked where he had dropped us off, but he drove down I  
2 believe to where we had been dropped off and picked us up, and  
3 I remember Briana being there when we got back.

4 MR. BLOOM: I'm sorry, could I get that repeated?

5 A. I remember Briana being there with the bush. I kind of  
6 remember thinking, oh, she must have been so nervous and --

7 MR. BLOOM: What I didn't understand is what Justin  
8 supposedly did.

9 MR. FRIEDMAN: He'll have the opportunity to ask all  
10 these questions on cross-examination.

11 MR. BLOOM: I just want to hear it and make a note on  
12 it.

13 THE COURT: Can you remember what you said about what  
14 Justin did?

15 A. I believe someone called him on the radio, and he drove  
16 from a different location nearby to the place where he had  
17 dropped us off and picked us up in the rental car. I will  
18 just say that I have a pretty clear memory of walking back  
19 across this road and feeling relief.

20 BY MR. FRIEDMAN:

21 Q. Would you take a look at Exhibit 775 and tell me whether  
22 you recognize that.

23 A. Yes, I recognize that.

24 Q. What is that?

25 A. I believe that's the rental car.

1 MR. FRIEDMAN: Government offers Exhibit 775.

2 MR. BLOOM: Did the witness answer the question?

3 THE WITNESS: I'm sorry, was there a question  
4 pending?

5 MR. BLOOM: The question was: Was that the car?  
6 Could I get your answer repeated, please.

7 A. Yes, I believe that that's the car. It fits what I  
8 remember about the car.

9 MR. BLOOM: I have no objection.

10 THE COURT: Admitted.

11 (Exhibit No. 775 admitted.)

12 BY MR. FRIEDMAN:

13 Q. So you were picked up in this car?

14 A. I believe we were, yes.

15 Q. And all five of you were in this car?

16 A. Yes.

17 Q. What happened after everyone got into the car?

18 A. Well, Justin was driving, and I remember being in the back  
19 seat and we had a scanner to listen to the radio, emergency  
20 responder, radio frequencies. Someone -- I remember the  
21 scanner being out. I remember driving out of the area, the  
22 residential area. I remember that as we turned left onto a  
23 residential street, there were cars double parked on both  
24 sides of the street -- I think it was a one-way street -- and  
25 Justin nicked, with the back of the car we were in, nicked one

1 of the cars as he was -- on the side here -- as he turned the  
2 corner.

3 Q. When you say nicked, you mean slight contact?

4 A. Yes. It felt huge to me, but it was not significant.

5 MR. BLOOM: I'm sorry, you said "huge" and then your  
6 voice dropped.

7 A. It felt huge, but it was not significant.

8 BY MR. FRIEDMAN:

9 Q. What happened after that? Did you keep driving?

10 A. No, we switched drivers and Avalon started driving.

11 Q. Did you switch right at the scene at which --

12 A. No, I think we were sort of -- there was panic, keep  
13 driving. We pulled over a couple blocks away. I think Avalon  
14 and Justin got out and looked, and the rest of us stayed in  
15 the car, and then Avalon drove after that point.

16 Q. To where did you drive?

17 A. Well, we were driving around and we pulled over on another  
18 residential road, which I didn't want to do, and we were  
19 listening to the scanner.

20 Q. Why were you listening to the scanner?

21 A. Avalon wanted to hear the fireman's response.

22 Q. Did you hear the fireman's response?

23 A. Yes. We heard the call, and we heard firefighter jargon  
24 about how many trucks were being sent. There seemed to be  
25 some hesitation to start fighting the fire because they



1 thought there might be -- because it was a science lab and  
2 they thought there might be chemicals in the building. I have  
3 a pretty clear memory of hearing a firefighter trying to  
4 decide whether or not to continue fighting the fire from the  
5 roof of the building.

6 Q. Why do you have a clear memory of that?

7 A. Because it was terrifying to hear him in this dangerous  
8 situation.

9 Q. Do you recall Avalon's response as he was listening to the  
10 scanner?

11 A. Avalon seemed excited.

12 Q. For how long do you think you stayed pulled over listening  
13 to the scanner?

14 A. Not too long. I was really uncomfortable with it, and I  
15 think that I pushed to leave. I would say between five and  
16 ten minutes.

17 Q. Where did you go from there?

18 A. After that, we went to a park nearby with a big manmade  
19 lake in the middle.

20 Q. Did all five of you go there?

21 A. I am not sure if Jennifer Kolar was with us at that point.  
22 I think we dropped her off at some point. I remember thinking  
23 she was so lucky to be out and done, but the rest of us went  
24 to the park. The idea was that we needed to wait until there  
25 was more traffic on the highway before we hit the highway and

1 started driving south.

2 Q. Why did you want to wait for more traffic?

3 A. Because we didn't want to be a conspicuous car on the  
4 traffic cams at an unusual hour of the morning.

5 Q. For how long did you wait in the park, do you think?

6 A. Until morning traffic time.

7 Q. What did you do once you got through morning traffic?

8 A. We got in the car and drove back towards Olympia.

9 Q. Where did you go once you arrived in Olympia?

10 A. I remember just a couple things about that period of time.  
11 I remember having a conversation with Avalon -- I remember  
12 that Avalon and Justin were supposed to fix the dent in the  
13 car, and I ended up at Nathan Block and Joy Zacher's rented  
14 cabin in the woods.

15 Q. Had you had any sleep during that day?

16 A. No, so we slept for a couple hours. I knew that those  
17 people were involved in a simultaneous action and --

18 Q. When you say "those people," who did you mean by that?

19 A. The five people, Nathan Block, Joy Zacher, Suzanne Savoi e,  
20 Daniel McGowan and Stan Meyerhoff.

21 Q. How did you know they were involved in another action?

22 A. Well, when they dropped me off by myself in Olympia, I  
23 think I had -- that first weekend, I had some forewarning that  
24 they were going to do something else related but not the same.

25 Q. So did you learn more about that after you had slept a

1 couple hours on the morning of the 21st?

2 **A.** Well, they were all there, and they were all keyed up  
3 about what they had done, and they made little comments about  
4 driving and carrying heavy stuff and crawling through the  
5 brush, but I was not clear on what in particular had happened.

6 **Q.** Did you do anything else relating to the arson that you  
7 had just participated in?

8 **A.** Later that morning, four of us I believe sat down and  
9 wrote a communiqué or a claim of responsibility for the arson.

10 **Q.** Which four people did that?

11 **A.** I believe it was myself, Suzanne Savoi e, Daniel McGowan  
12 and Nathan Block.

13 **Q.** When you say a communiqué for the arson --

14 **A.** For the two simultaneous actions.

15 **Q.** What happened to that communiqué after you wrote it?

16 **A.** My understanding was that Chelsea Gerlach was going to  
17 take it and either send it out through an anonymous computer  
18 herself, or give it to Jen Kolar who knew a coffee shop  
19 without cameras where she could send it from.

20 **Q.** Did you subsequently learn whether the communiqué had  
21 actually gotten out and gotten published?

22 **A.** No. Days passed and there was no claim of responsibility.

23 **Q.** At some point, was there a claim of responsibility?

24 **A.** It seemed like a long time later, but I think it was just  
25 a matter of days.

1 Q. Did you eventually see the communiqué that came out?

2 A. Yes.

3 Q. Would you take a look at Exhibit 349 and tell me if you  
4 recognize that.

5 THE COURT: Before you get into the actual  
6 communiqué, are you anywhere close?

7 MR. FRIEDMAN: Probably 10 minutes. We could finish  
8 tomorrow. Either way, Your Honor.

9 THE COURT: Well, of course, we have to have her back  
10 for cross. Let's do this. Let's recess, keep to my schedule.  
11 I told you we will recess at 4:00, around there, so you will  
12 get a chance to go home and get a good night's rest and  
13 hopefully be back in the same position at 9:00. You'll hear  
14 the rest of the case. Don't discuss the case or research  
15 anything or get involved in any way.

16 As I keep saying, everything that you need to decide this  
17 case you will receive right here in this courtroom. Leave  
18 your books on the chair. I will see you back here in the  
19 morning.

20 (Jury not present.)

21 THE COURT: You may be seated.

22 Unless there's some issue that I need to take up, we will  
23 be at recess for the day.

24 MR. BLOOM: May the witness be excused?

25 THE COURT: Yes. Do you have something to take up?

1           MR. BLOOM: Well, it relates to the witness. I think  
2 Mr. Friedman has something.

3           THE COURT: That's what I am asking.

4           MR. FRIEDMAN: We had our motion in limine --

5           THE COURT: Well, I don't know if that's an issue. I  
6 don't know anything more about that than I did the last time.  
7 Let's take the witness out.

8           (Witness left courtroom.)

9           THE COURT: Is the answer this time any different  
10 than the answer I got the last time as to if you are going to  
11 use this exhibit?

12          MR. FOX: Could I have one moment?

13          (Discussion held off the record.)

14          THE COURT: I would like to know the purpose for  
15 which it is going to be used, and we can have further  
16 discussion on this at 8:30 in the morning.

17          MR. FOX: I think the only issue would be -- and I  
18 don't know if Mr. Friedman is going to deal with this -- but  
19 the letters reflect the witness's very deep emotional  
20 connection to Stan Meyerhoff, and the way she made it sound  
21 is, we are fiancées.

22          I guess to the extent that in cross-examination she denied  
23 that she's intricately and intimately connected to Stan in an  
24 incredibly deep and significant manner, and that she wants to  
25 have his children, and that she misses him, and all the things

1 that are in the love letters. I think if she is in any way  
2 reluctant to admit that on cross, then I think the letters  
3 become relevant.

4 Her presentation was: Well, we got together --

5 THE COURT: Well, I understand what you are saying,  
6 but let's see what her response to you may be. Right now, you  
7 are wanting me to answer something that hasn't even happened  
8 yet.

9 MR. FOX: We haven't made the motion. If nothing  
10 comes up -- but we will bring it up outside the presence of  
11 the jury.

12 THE COURT: What you are telling me is this would be  
13 -- the reason you would want to use it is for the reason you  
14 just stated?

15 MR. FOX: Right.

16 THE COURT: We will.

17 Be at recess. We will see you at 8:30.

18 THE CLERK: All rise. Court is adjourned.

19 (The Court recessed to Friday, February 15, 2008 at  
20 the hour of 9:00 a.m.)

21 \* \* \* \* \*  
C E R T I F I C A T E

22 I certify that the foregoing is a correct transcript from  
23 the record of proceedings in the above-entitled matter.

24 /S/ Teri Hendrix  
Teri Hendrix, Court Reporter

May 2, 2008  
Date

25